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Title Page and Index to Volume 121

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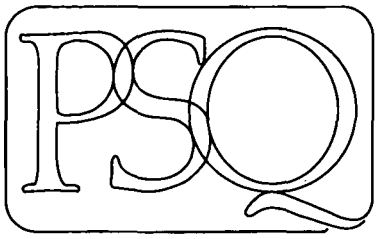

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CONTENTS

PSQ • Volume 121 • Number 4 • Winter 2006–07

Deterring Nonstate WMD Attacks
DAVID P. AUERSWALD 543

The Fight against Terrorist Financing
ANNE L. CLUNAN 569

The Politics of Russia's Elusive Defense Reform
ZOLTAN BARANY 597

Airbus and Boeing: Strengths and Limitations of Strong States
JOHN G. FRANCIS
ALEX F. PEVZNER 629

Presidential Survival and the Impeachment Process:
The United States and Colombia
VICTOR J. HINOJOSA
ANÍBAL S. PÉREZ-LIÑÁN 653

The Canadian Supreme Court: Attitudinal Conflict in Right
to Counsel Cases
C.L. OSTBERG
MATTHEW E. WETSTEIN 677

Book Reviews 699

Correspondence 749

Title Page and Index to Volume 121 753

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BOOK REVIEWS

Thomas G. Hansford and James F. Spriggs II, **The Politics of Precedent on the U.S. Supreme Court** — Mark S. Hurwitz — 699

Alexander Cooley, **Logics of Hierarchy: The Organization of Empires, States, and Military Occupation** — Katja Weber — 700

Edward D. Mansfield and Jack Snyder, **Electing to Fight: Why Emerging Democracies Go to War** — Bruce Russett — 701

Kenneth Kitts, **Presidential Commissions and National Security: The Politics of Damage Control** — Amy B. Zegart — 703

Rachel Bronson, **Thicker than Oil: America's Uneasy Partnership with Saudi Arabia** — William B. Quandt — 705

Mikhail A. Alexseev, **Immigration Phobia and the Security Dilemma: Russia, Europe, and the United States** — Kimberly Marten — 706

Chris Patten, **Cousins and Strangers: America, Britain, and Europe in a New Century** — Jolyon Howorth — 708

John A. Adams, **Bordering the Future: The Impact of Mexico on the United States** — Tony Payan — 709

Peter W. Galbraith, **The End of Iraq: How American Incompetence Created a War Without End** — James J. Wirtz — 710

Adam L. Warber, **Executive Orders and the Modern Presidency: Legislating from the Oval Office** — Louis Fisher — 712

John Yoo, **The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11** — Kenneth W. Thompson — 713

Grant Reeher, **First Person Political: Legislative Life and the Meaning of Public Service** — Gerald Benjamin — 714

Alan Gibson, **Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic** — Jethro K. Lieberman — 716

Jonathan Alter, **The Defining Moment: FDR's Hundred Days and the Triumph of Hope** — Sarah Phillips — 717

Scott A. Frisch and Sean Q. Kelly, **Committee Assignment Politics in the U.S. House of Representatives** — John Baughman — 719

Fredrick C. Harris, Valeria Sinclair-Chapman, and Brian D. McKenzie, **Countervailing Forces in African-American Civic Activism, 1973–1994** — Keith A. Mayes — 720

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ELECTRONIC REPRODUCTION PROHIBITED

Peter L. Francia, **The Future of Organized Labor in American Politics** JOSEPH A. MCCARTIN 722

Robert David Johnson, **Congress and the Cold War** BARRY M. BLECHMAN 723

Ron Hayduk, **Democracy for All: Restoring Immigrant Voting Rights in the United States** J. MORGAN KOUSSER 724

Matthew Eshbaugh-Soha, **The President's Speeches: Beyond "Going Public"** PHILIP ABBOTT 726

Jack Bass and Marilyn W. Thompson, **Strom: The Complicated Personal and Political Life of Strom Thurmond** HANES WALTON, JR. 727

Daniel P. Franklin, **Politics and Film: The Political Culture of Film in the United States** DORIS A. GRABER 728

Brandice Canes-Wrone, **Who Leads Whom? Presidents, Policy, and the Public** RICHARD SOBEL 730

David Mark, **Going Dirty: The Art of Negative Campaigning** LEAH A. MURRAY 732

Jennifer L. Erkulwater, **Disability Rights and the American Social Safety Net** MICHAEL GIVEL 733

Ralph Brauer, **The Strange Death of Liberal America** CAROL NACKENOFF 734

John Foran, **Taking Power: On the Origins of Third World Revolutions** SAÏD AMIR ARJOMAND 736

Toyin Falola and Ann Genova, **The Politics of the Global Oil Industry** EVAN HILLEBRAND 737

Shale Horowitz, **From Ethnic Conflict to Stillborn Reform: The Former Soviet Union and Yugoslavia** JULIE GEORGE 738

Nikolaos Zahariadis, **Essence of Political Manipulation: Emotion, Institutions, and Greek Foreign Policy** SYMEON A. GIANNAKOS 740

Goran Hyden, **African Politics in Comparative Perspective** NICOLAS VAN DE WALLE 741

Moshe Gammer, **The Lone Wolf and the Bear: Three Centuries of Chechen Defiance of Russian Rule** GEORGI M. DERLUGUIAN 743

Henry E. Hale, **Why Not Parties in Russia? Democracy, Federalism, and the State** STEPHEN BLANK 744

Thomas D. Zweifel, **International Organizations and Democracy: Accountability, Politics, and Power** STEVEN BERNSTEIN 745

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From the Editor:

In this issue . . .

DAVID P. AUERSWALD assesses whether deterrence policies can prevent a WMD attack by nonstate actors. He argues that deterrence may not preclude terrorist attacks, but that deterrence threats can greatly impede trafficking in WMD and related materials, preventing terrorists from getting these weapons in the first place.

ANNE L. CLUNAN examines the prospects for an international regime to combat terrorist financing. She concludes that in the absence of a common definition among the United States and its European allies, the prospects for implementing a vigorous counter-terrorist-financing regime are dim.

ZOLTAN BARANY considers the reasons for the absence of substantive defense reform in Russia fifteen years after the Soviet collapse. He argues that even though reform was high on President Putin's agenda when he took office, a combination of factors has prevented him from enforcing its implementation. Among these, the most significant has been consistent opposition to the transformation from the top of Russia's military establishment.

JOHN G. FRANCIS and ALEX F. PEVZNER focus on the rise of Airbus in the global aviation market over the past three decades to near parity with Boeing. They argue that the fortunes of Airbus cannot be understood without recognizing that historically, the manufacture of large commercial aircraft has been shaped by the industrial policies of strong states. The European consortium that produced Airbus was able to work as a strong state, anticipating the deepening economic integration of the European Union.

VICTOR J. HINOJOSA and ANÍBAL S. PÉREZ-LIÑÁN compare the attempted impeachments of Presidents Ernesto Samper of Colombia and William J. Clinton of the United States. They show that public opinion and executive-legislative politics account for the survival of both presidents.

C.L. OSTBERG and MATTHEW E. WETSTEIN explore whether Supreme Court justices in Canada are influenced by their political ideology when resolving right to counsel cases. Using an empirical model that controls for the effects of case facts, they find considerable evidence that the attitudes of the justices do provide a significant explanation for their voting behavior in nonunanimous cases.

DEMETRIOS JAMES CARALEY

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Deterring Nonstate WMD Attacks

DAVID P. AUERSWALD

A terrorist group armed with a weapon of mass destruction (WMD) is arguably the greatest threat to the United States and its allies in the current era.[1] Porter Goss, former Director of Central Intelligence, starkly made this point in 2005 testimony before Congress. "Al Qaeda is intent on finding ways to circumvent U.S. security enhancements to strike Americans and the Homeland. It may be only a matter of time before Al Qaeda or another group attempts to use chemical, biological, radiological, and nuclear weapons."[2] The U.S. government has reason to be afraid. Recent terrorist attacks in London, Madrid, and Bali were horrific, but were carried out with conventional explosives. The physical, economic, and psychological damage from a terrorist WMD attack could easily equal or exceed that of the 11 September 2001 attacks, to say nothing of its effects on the pace of globalization, which may explain why al Qaeda leader Osama bin Laden has voiced an interest in acquiring WMD.[3]

> Acquiring [WMD] weapons for the defense of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so. And if I seek to acquire these weapons, I am carrying out a duty. It would be a sin for

[1] For the purposes of this article, WMD include nuclear, radiological, chemical, and biological weapons.

[2] *Current and Projected National Security Threats to the U.S.: Hearings before the Senate Select Committee on Intelligence*, 109th Cong., 1st Sess (testimony of Porter Goss, 16 February 2005, 2). Also see National Intelligence Council, *Mapping the Global Future* (Washington DC: Government Printing Office, 2004), 93–95. For similar comments in 2003, see *The International Terrorist Threat: Hearings before the House International Relations Committee, Subcommittee on International Terrorism*, 108th Cong., 1st Sess. (testimony of Cofer Black, 26 March 2003). As Audrey Cronin notes, religious terrorists show little restraint in the conduct of war (*jus in bello*) once they have justified going to war (*jus ad bellum*). Audrey Cronin, "Rethinking Sovereignty," *Survival* 44 (Summer 2002): 119–139.

[3] Thomas Friedman, *The World is Flat* (New York: Farrar, Straus and Giroux, 2005), 391–413.

DAVID P. AUERSWALD is a professor of strategy and policy at the National War College in Washington DC. He has published articles and books on coercive diplomacy, the politics of military interventions, and Congress and foreign policy.

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Muslims not to try to possess the weapons that would prevent the infidels from inflicting harm on Muslims.[4]

Of equal and related concern, there have been repeated attempts to smuggle chemical and nuclear WMD materials from former Soviet territory over the last several years.[5] More recently have come revelations that one or more Pakistani scientists provided uranium enrichment technology, expertise, and nuclear warhead designs to Libya, Iran, North Korea, and possibly, even to Syria and Iraq.[6] Allegations have circulated that these same officials may have passed information to al Qaeda on how to construct a radiological "dirty bomb."[7] Other allegations exist that arms traffickers from the former Soviet Union have been approached by al Qaeda for nuclear materials.[8]

Two things are surprising, given the seriousness of a potential terrorist WMD attack. First, the idea that religiously oriented terrorists cannot be deterred from attacking Western interests or from using WMD if the terrorists acquire such weapons is a relatively unexplored assumption, based on anecdotal evidence.[9] Nonetheless, this assumption is consistently made by most academicians and the U.S. government. Consider that the heart of the George W. Bush administration's preemption doctrine is the idea that terrorist groups

[4] John Parachini, "Comparing Motives and Outcomes of Mass Casualty Terrorism Involving Conventional and Unconventional Weapons," *Studies in Conflict and Terrorism* 24 (September 2001): 389–406.

[5] William Potter, "Nuclear Smuggling from the Former Soviet Union" in David Marples and Marilyn Young, eds., *Nuclear Energy and Security in the Soviet Union* (Boulder, CO: Westview Press, 1997): 139–159; John Berryman, "Russia and the Illicit Arms Trade," *Crime, Law and Social Change* 33 (March 2000): 85–104; Joby Warrick, "Smugglers Enticed by Dirty Bomb Components," *The Washington Post*, 30 November 2003; and Tom Parfitt, "The Nuclear Nightmare," *The Times* (UK), 3 March 2004.

[6] Peter Slevin, John Lancaster, and Kamran Khan, "At Least Seven Nations Tied to Pakistani Nuclear Ring," *The Washington Post*, 8 February 2004; William Broad, "Libya's A-Bomb Blueprints Reveal New Tie to Pakistani," *The New York Times*, 9 February 2004.

[7] Owais Tohid, "Pakistan and its Proliferator," *The Christian Science Monitor*, 6 February 2004, 1.

[8] Lyudmila Zaitseva and Kevin Hand, "Nuclear Smuggling Chains," *American Behavioral Scientist* 46 (February 2003): 822–844.

[9] Joseph Lepgold, "Hypotheses on Vulnerability: Are Terrorists and Drug Traffickers Coerceable?" in Lawrence Freedman, ed., *Strategic Coercion: Concepts and Cases* (Oxford: Oxford University Press, 1998), 131–150; Gerald Post, "Psychological and Motivational Factors in Terrorist Decision-making: Implications for CBW Terrorism" in Jonathan Tucker, ed., *Toxic Terror: Assessing the Terrorist Use of Chemical and Biological Weapons* (Cambridge, MA: Harvard University Press, 2000), 271–290; Daniel Byman, "Scoring the War on Terrorism," *National Interest* 72 (Summer 2003): 75–84; Paul Davis and Brian Jenkins, *Deterrence and Influence in Counterterrorism* (Santa Monica, CA: RAND, 2002), 12–14; Adam Dolnik, "Die and Let Die: Exploring Links between Suicide Terrorism and Terrorist Use of Chemical, Biological, Radiological, and Nuclear Weapons," *Studies in Conflict and Terrorism* 26 (January–February 2003): 17–35; and Thomas Friedman, "War of Ideas, Part 1," *The New York Times*, 8 January 2004. For somewhat opposing views, see Gerald Steinberg, "Rediscovering Deterrence After September 11, 2001," *Jerusalem Letters/Review*, no. 467, 2 December 2001; John Parachini, "Putting WMD Terrorism into Perspective," *The Washington Quarterly* 26 (Autumn 2003): 37–50; Lawrence Freedman, *Deterrence* (Malden, MA: Polity Press, 2004), 124.

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cannot be deterred from launching attacks on the United States. Second, there is little discussion in academic or policy circles as to how terrorists might acquire WMD, other than to assert that state sponsors of terrorists should be deterred or coerced to withhold such material, or that weapons stockpiles should be consolidated and better guarded and that weapons scientists should be paid a living wage.[10]

This article rectifies both points. I first explore the general problem of how one might deter WMD attacks by terrorist actors. In essence, this is a demand-side question, in that Western deterrence would be aimed at decreasing terrorist demand for WMD. Key to understanding the problem of deterring terrorist groups is reexamining the fundamental tenets of deterrence theory and assessing whether the past inability to deter terrorists was due to some intrinsic characteristics of those groups or instead to the incomplete application of deterrence theory by nation-states. I argue that both are true and to a large extent unavoidable. Deterring terrorists by threatening punishment is extremely difficult, given terrorist motivations and liberal democratic values, and may even be self-defeating. A deterrence strategy that would deny terrorists any gains from mass casualty WMD strikes is also difficult for nation-states to sustain, even for states as powerful as the United States.

Given the difficulties associated with deterring a terrorist WMD attack, I then discuss how to deny terrorists the *means* to launch devastating attacks. This is a supply-side question. I focus attention on transnational organized crime as a likely source of WMD and WMD materials and argue that deterrence threats can work when aimed at such groups. A wide literature on organized crime groups, and on the deterrence relationship between threatened punishment and criminal behavior, supports the idea that transnational organized crime groups should be susceptible to deterrence threats, given particular, achievable circumstances. In short, I advocate a strategy of preventing WMD terrorist attacks by deterring potential nonstate WMD suppliers via a deterrence strategy. I conclude by reviewing the policy implications of my argument.

The Calculus of Deterrence

The supposed track record of deterring terrorists is not good, even for powerful states or states willing to retaliate after an attack. For instance, unrivaled hegemonic power has not kept the United States safe from terrorist attack; nor has often-brutal retaliation deterred suicide attacks in Russia or Israel. The

[10] For examples of the former perspective, see Derek Smith, "Deterrence and Counter-proliferation in an Age of WMD," *Security Studies* 12 (Summer 2003): 152–197; Andrew Newman, "Arms Control, Proliferation and Terrorism," *Strategic Studies* 27 (March 2004): 59–88. The Cooperative Threat Reduction initiative is a cornerstone of the latter perspective. Our ability to deter state proliferation to terrorists is at the heart of the President's statements that "You are either with us or against us." See Jasen Castillo, "Nuclear Terrorism: Why Deterrence Still Matters," *Current History* (December 2003): 426–431.

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problem is that in the former case, it is unclear that the United States has actually signaled a broad deterrence threat against terrorists. Instead, we have vowed to kill or capture any terrorists we find, regardless of whether they have attacked us. A similar dynamic is at work in the Russian and Israeli cases, compounded by the fact that neither country has offered an alternative inducement to the Chechens or the Palestinians, respectively, to provide them an incentive to stop fighting. Given these and other more general problems associated with attributing deterrence success and failure, this paper explores the dynamics involved in deterring a terrorist WMD attack in the abstract. I find that terrorist groups should indeed be hard to deter, due to both terrorist motivations and the inherent (and proper) constraints that liberal democracies place on their own behavior. But before applying any deterrence model, it is important to define terms.

Deterrence is a dynamic, interactive process between at least two entities. Deterrence policies are predicated on threatening an adversary with pain if that adversary changes its behavior in ways that you find detrimental to your interests. The threatened pain can take any number of forms, from military violence to financial penalties to diplomatic ostracism. You do not actually have to inflict the pain to be successful at deterrence. In fact, resorting to retaliation means that your deterrence policy has failed. Instead, successful deterrence relies on influencing an adversary's perceptions and expectations of pain. You must make them believe that you will inflict pain if they change their behavior in ways that you do not like, regardless of whether you actually plan on causing pain should deterrence fail. You also may need to promise to withhold your threat should the adversary not change their behavior, and have that promise believed (or there is no reason for the adversary to comply with your demands). For all of these reasons, deterrence success is heavily dependent both on signaling the adversary of your intentions and on that adversary interpreting your signals correctly. Communication, through words and deeds, is thus central to a deterrence relationship.

For deterrence to work against an individual, a terrorist or crime group, or a nation-state, you must either increase the costs that the entity has to pay, or decrease the benefits they get, should they change their behavior. In the parlance of deterrence, threatening to increase the adversary's costs is often referred to as deterrence by punishment.[11] American threats of massive nuclear retaliation against Soviet cities, had the Soviets invaded western Europe, is an example of deterrence by punishment. Threatening to decrease or nullify the benefits reaped by an adversary should it change its behavior is often referred to as deterrence by denial. Targeting Soviet weapons and troops in the field was a Cold War example of deterrence by denial, in that their destruction would deny the Soviets the ability to control western Europe.

[11] Glen Snyder, *Deterrence and Defense: Toward a Theory of National Security* (Princeton, NJ: Princeton University Press, 1961).

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A deterrence-by-denial strategy is often equated with defensive measures in standard treatments of deterrence. But whereas defense is the use of brute force to repel or defeat an attack, deterrence by denial uses the *threat* of defeat to prevent the attack before it occurs. To use a concrete example, homeland security capabilities are pure defenses to the extent that they can defeat a terrorist attack. They are a deterrent only if their existence changes a terrorist's perceptions of likely success, leading to an abandonment of the terrorist attack.

Distinguishing deterrence from defense yields two related points. First, deterrence by denial is usually discussed in the context of potentially violent conflicts in which what is being denied is a military objective. The concept of denial could just as easily be applied to nonmilitary objectives, however, such as the broader political or religious goals of a terrorist movement. The deterrent policy attempts to create the perception that a terrorist's goals cannot be achieved, which should decrease the rationale for violent terrorist attacks. Second, deterrence by denial has often been applied to confrontations between opposing military forces, yet a deterrence-by-denial strategy could employ nonmilitary means. For example, an opposition party's threat to boycott an election should the government party prohibit international observers is an example of a nonmilitary deterrence-by-denial strategy, at least if opposition participation is crucial to the election's legitimacy and the government values such legitimacy. The opposition's threats are not defensive; they do not prohibit votes for the government party. Instead they threaten to conditionally deny the government any benefit from the election, thus qualifying as deterrence by denial.

Deterrence by punishment is a difficult but possible strategy against nonstate actors. It requires convincing signals that we could identify *whom* to retaliate against. In other words, do our potential adversaries believe that we can link those responsible for an attack to the events themselves? Second, we have to convincingly signal that we can identify *what* to retaliate against to inflict pain. That is, we must be able to identify what an adversary values. As I discuss below, terrorist and crime groups have numerous component parts, including leaders, foot soldiers, financiers, logisticians, etc. A crucial facet of a deterrence-by-punishment strategy is signaling that we know what is valued by each component of a nonstate organization and where it is located. Third, we have to signal that we have the *will* and *capabilities* to inflict pain against those things valued by each actor's component parts. That is, we must demonstrate that our threats are credible. Doing so may require everything from publicly maintaining appropriate capabilities, to overcoming the legal and organizational impediments for their use, to the public release of successful instances of retaliation. Most importantly, our deterrence threats stand a better chance of appearing credible if we demonstrate that we have no choice but to implement our threats should that be necessary.[12]

[12] Thomas Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1960); Thomas Schelling, *Arms and Influence* (New Haven, CT: Yale University Press, 1966).

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Deterrence by denial, as defined here, has different requirements. To deny an opponent any benefit from an attack on us requires that we identify the opponent's *goals* with some specificity. This requires excellent intelligence capabilities regarding the adversary's priorities and decision-making apparatus. It also requires that we understand the consequences of the steps we take to deny the adversary their goals. For instance, threatening military retaliation for terrorist attacks on us may be counterproductive, in that military retaliation could enhance the adversary's goals of martyrdom or appearing as victims of Western imperialism.

We must also convincingly signal that we have the ability to *prevent* an opponent from achieving its goals (preferably whether or not we retaliate for an attack). If the power to hurt is bargaining power, then denying that power to opponents diminishes their power.[13] For instance, if a terrorist's goals would be advanced via the destruction of a specific class of targets (that is, embassies, ships, aircraft, etc.) or through the use of particular forms of attack (that is, computer attacks, car bombs, WMD, etc.) deterrence could be enhanced if the opponent believed that we were aware of its plans and/or had the ability to defend against them, rendering those plans relatively harmless. If a terrorist group wants the United States out of the Middle East, maintaining a robust U.S. presence in the region, regardless of the cost, threatens that terrorist goal.

There are a number of potential problems associated with each type of deterrence. Deterrence by punishment requires excellent intelligence, particularly when applied to terrorists. Without good intelligence, we cannot identify the perpetrators of attacks or appropriate retaliatory measures. Punishing terrorists also may require relaxing the laws of war to allow for the targeting of noncombatants, with all the serious repercussions that this would entail. On the other hand, a deterrence-by-denial strategy could require public signals that we know an enemy's targets or goals, which could lead to alternative targets being selected or create domestic panic. In addition, we must publicly disseminate at least some information regarding our defensive measures, if defenses are to act as a deterrent, or our political intent, if denying broad terrorist goals is our intent. The result of doing either could be that those very defenses or that political intent would be undermined, or that terrorists would choose a softer target or shift goals. Finally, defenses and demonstrating political staying power are both potentially expensive.

This short conceptual discussion points to serious dilemmas associated with deterring WMD attacks using either threats of punishment or denial. Moreover, any solution will of necessity have limited applicability if attempted across the spectrum of nonstate organizations and possible scenarios of attack. Indeed, deterrence requires a case-by-case approach, because nonstate actors vary tremendously in terms of their goals, organization, and support. The following

[13] Branislav Slantchev, "The Power to Hurt: Costly Conflict with Completely Informed States," *American Political Science Review* 97 (February 2003): 123–135.

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section discusses the difficulty of deterring WMD attacks from extreme religious terrorist groups.

Deterring Terrorist WMD Attacks

The United States is currently most concerned about preventing attacks from religious fundamentalist groups such as al Qaeda, particularly those attacks that might produce mass casualties and/or involve WMD. Indeed, this section will demonstrate that it is almost impossible to devise an effective deterrent threat against terrorist WMD attacks by religious fundamentalist groups, for multiple, reinforcing reasons.[14] First, such terrorists are highly motivated, and deterrence tends to fail against such opponents. Our notion of retaliatory punishment may in fact benefit (and even encourage) such terrorists. Second and related, we may undermine our own effort. The response of religious terrorists to our threatened implementation may be exactly the opposite of what we intended, because we do not understand the impact of our retaliation on a terrorist group's standing in their own communities. Moreover, our overriding need to defend against terrorist attacks may in some instances undercut our deterrence threats. Third and finally, terrorist actors may be difficult to locate, because they are transnational in nature and blend in with civilian populations, and we cannot credibly threaten pain against those we cannot find.

Deterrence by Punishment

Terrorist motivations and their consequences. Deterrence by punishment is one possible but extremely daunting means of preventing such attacks. Deterring an al Qaeda WMD attack via threats of U.S. punishment requires understanding what to retaliate against and how to do so for the greatest effect. As Thomas Schelling noted in the 1960s, knowing what an opponent values is a necessary condition for deterrence success. The motivations of al Qaeda operatives, therefore, are crucially important to this facet of the deterrence equation. To summarize a voluminous literature, al Qaeda is a group that feels threatened by the secular modern world and oppressed by corrupt Middle East regimes. As a result, al Qaeda aims to drive the United States out of the Middle East and overthrow those regimes friendly to the West. In their place would be created a Muslim caliphate, governed by strict adherence to Islamic law. But that said, al Qaeda is an evolving entity. The group increasingly has taken on the status of a movement or an ideology rather than a formal organization.[15] In that sense, al Qaeda and its affiliated groups are like a cancer growing in the modern world and seeking to destroy that world from within.

[14] Cronin, "Rethinking Sovereignty," 130; Davis and Jenkins, *Deterrence and Influence*, 3–7.

[15] Raymond Bonner and Don Van Natta, "Regional Terrorist Groups Pose Growing Threat, Experts Warn," *The New York Times*, 8 February 2004; Jamie Glazov, "Symposium: Diagnosing Al Qaeda," *Front Page Magazine*, 12 August 2003; Byman, "Scoring the War on Terrorism."

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But knowing what motivates this movement as a whole is not enough for determining an appropriate form of threatened punishment. Members of al Qaeda are not all alike or interchangeable, and al Qaeda is not the only group of concern when it comes to potential WMD attacks. The movement comprises different types of people with different levels of training and expertise. Most importantly, each component part may respond differently to retaliatory deterrence threats—responses that may seem counterintuitive at first glance.

Paul Davis and Brian Jenkins disaggregate al Qaeda into senior leaders, lieutenants, foot soldiers, recruiters, and supporters among the populace and among religious leaders. Bruce Hoffman groups the organization into leaders, professional cadres, trained amateurs, local walk-ins, and affiliated groups. Regardless of what specific categories one uses, al Qaeda seems to have relatively few senior leaders, a greater number of highly trained lieutenants, anywhere from 50,000 to 70,000 trained foot soldiers from its camps in Sudan and Afghanistan, and an indeterminate (but increasing) number of relatively untrained volunteers like Richard Reed, Jose Padillo, and an unknown number of recruits in Iraq.[16] Add to that, the movement actively recruits new volunteers through appeals in mosques, on the Internet, and in Arab language media. The movement receives financial support from a host of sources, ranging from direct donations from individuals and front organizations, to profits from drug smuggling, to indirect donations siphoned from legitimate charities.

Any deterrence strategy must incorporate the fact that each component of a terrorist organization may have different specific motivations and values. For instance, senior al Qaeda leaders have not led suicide missions in the United States or Iraq, or fought to the death in the mountains of Afghanistan, even though they claim not to fear death. Instead, they have been deeply involved in the planning, logistics, and financing of such attacks, leaving implementation to their lieutenants. If senior leaders are averse to dying, then threatening their lives could be a useful deterrent to the mass-casualty, "spectacular" attacks that senior al Qaeda leaders are alleged to plan and direct.[17] Were such a strategy to work, it would obviate the need to worry about WMD attacks by lower level members.

Two possible consequences could undermine such a deterrence strategy, however. First, assassination is morally repugnant to many, and advocating it absent an attack and a clear evidentiary trail to the correct perpetrators might create a public backlash, particularly given current skepticism regarding intelligence claims.[18] Second, we would have to credibly commit to spare terrorist

[16] Davis and Jenkins, *Deterrence and Influence.*

[17] Bruce Hoffman, "The Leadership Secrets of Osama Bin Laden," *The Atlantic Monthly* 291 (April 2003): 26–27.

[18] Brian Jenkins, *Should our Arsenal against Terrorism Include Assassination?* (Santa Monica, CA: RAND, 1987); and Catherine Lotrionte, "When to Target Leaders," *Washington Quarterly* 26 (Summer 2003): 73–86.

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leaders that withheld WMD attacks if threatened assassination were to work as a deterrent. Terrorists have no incentive to restrain themselves absent our credible commitment on that score. The implications are profound. Withholding U.S. action in the name of deterrence, absent attack, contravenes the stated U.S. policy of degrading terrorist capabilities whenever possible. One cannot do both. But it is unclear whether an elected official can survive politically by arguing that the country should engage in a risky and by no means certain attempt to deter a terrorist attack at the expense of leaving a terrorist group's capabilities intact.

If we cannot deter terrorist leaders, perhaps we can deter lower level operatives. Unfortunately, threats of lethal punishment are unlikely to deter lieutenants and foot soldiers either. These lower level operatives seem to embrace martyrdom to a much greater extent than do their leaders. Death in combat with the infidel is seen as a benefit, not a punishment, which makes deterrence threats self-defeating; they simply increase the enemy's motivation to attack. Extreme threats such as threatening to bomb Islamic holy sites or to bury so-called martyrs in pig fat to deny them entry to heaven would only reinforce accusations that the West was engaged in a clash of civilizations against the Muslim world and could increase terrorist recruitment, much as rumors of rifle cartridges lubricated with pig grease hastened the nineteenth-century Indian mutiny against the British.

Deterrence may not work even against those terrorists who choose martyrdom as a means of providing material and psychological benefits to their families—as has been the case with some suicide bombers in Israel—rather than for promised rewards in the afterlife.[19] In those cases, threatening the lives or livelihood of (presumably) innocent family members of known or suspected terrorists might work as a deterrent, but is morally reprehensible to many. Moreover, the record of Israeli reprisals when family members of suspected terrorists have been killed (intentionally or not) does not hold out much promise for this tactic.

Deterrence is complicated by one final, potentially unintended consequence. To deter a terrorist group requires signaling our abilities and intent. Given that we have no private, direct communication link with terrorist groups, we must communicate indirectly, with the significant possibility of that becoming public knowledge, or communicate publicly for the world to hear. Yet we face a dilemma if a terrorist group does not take responsibility for an attack. Intentional or inadvertent public linkage of an attack to a terrorist group may build our reputation for good intelligence, but doing so also may bolster that group's image or drive them into hiding, to say nothing of possibly compromising intelligence sources and methods.[20] The result is that the communication necessary for deterrence by punishment may strengthen the very groups we want to stop.

[19] Dolnik, "Die and Let Die," 29.

[20] Davis and Jenkins, *Deterrence and Influence,* xii.

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This does not mean that deterrence is doomed to fail, but it does mean that over time, we may have to deter an increasingly popular opponent.

Operational difficulties. There are a number of practical difficulties that make deterrence by punishment unattractive. We have to find the terrorists to punish them, and liberal democracies have so far shown little ability to locate even the most senior leaders of terrorist organizations, to say nothing of the vast numbers of terrorist underlings. Remember that successful deterrence by punishment requires that we demonstrate that we can identify who is behind an attack. This is hard to do on our own soil, as we saw with the stymied investigations into the anthrax- and ricin-laden letters sent to the U.S. Senate. Finding the perpetrators of an attack overseas arguably is more difficult. Intelligence failures associated with the September 11 attacks, with Operation Iraqi Freedom, and in the continuing hunt for bin Laden signal the world community that our intelligence assets may not be capable of correctly identifying the perpetrators of a terrorist attack.

Changing international perceptions on this score is a difficult although not insurmountable task. What we cannot do is jump to unsubstantiated conclusions in a rush to lay blame for a future attack. Being wrong will only reinforce the impression of faulty or politicized intelligence that the U.S. government already suffers from. If we can avoid that temptation, social psychologists tell us that we need attribute blame correctly in only a few instances to get the reputation that we can do so on a regular basis.[21] We may even get help from the terrorists themselves. After all, terrorist groups thrive on publicity, as witnessed by bin Laden's boasts after the September 11 attacks. Such boasts may be a terrorist's recruiting tool, but they also help us attribute blame. Whether the same behavior would hold true in the aftermath of a WMD attack is unknown.

Overall then, significant difficulties must be overcome for a successful deterrence-by-punishment strategy aimed at religiously oriented terrorist groups. It is by no means self-evident that such groups can be swayed by threats of punishment. Yet to be successful, we must minimize the consequences of our retaliatory actions. We must demonstrate that we can attribute blame for an attack to the proper group and then carry out our threatened punishment. And we must possess intelligence on how specific groups are organized, what is valued by each part of a terrorist organization, and what the group's center of gravity is for specific types of attacks.[22] Each of these requirements is daunting in and of itself. Combined, they support the conclusion that deterrence by punishment is not a viable stand-alone option when it comes to religiously motivated terrorist groups.

[21] Jonathan Mercer, *Reputation and International Politics* (Ithaca, NY: Cornell University Press, 1996).

[22] Davis and Jenkins, *Deterrence and Influence*, 43.

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Deterrence by Denial

Terrorist motivations. A denial strategy relies on demonstrating the ability to deny terrorists the achievement of their goals. Yet, as with deterrence by punishment, this is not a straightforward task. Al Qaeda differs from some of its affiliated groups when we consider its overall goals. Al Qaeda desires a Muslim caliphate free from Western interference and influence. While some regional or local terrorist groups may share that desire (Islamic Jihad or Jemaah Islamiyah, for example), many have separatist (for example, the Liberation Tigers of Tamil Eelam in Sri Lanka or the Chechens in Russia) or political agendas (Hamas, for example). Three specific goals stand out as worthy of consideration if we limit our discussion to groups motivated by radical religious ideologies. First and most immediately, groups such as al Qaeda need operational successes to keep their movements strong. Second, they want the West out of the Islamic holy lands. Third and finally, they want to overthrow those governments friendly to the West and replace them with Islamic republics that follow Shari'a law. A WMD attack in the United States would achieve the first goal and could arguably advance the second goal. A WMD attack against Middle Eastern regimes would also achieve their first goal and could advance the second and third goals, depending on international reactions.

Assuming that this is a valid portrayal, how could we demonstrate our ability to prevent those goals from being realized? Most immediately, we could take steps to thwart terrorist attacks by enhancing the active defense of U.S. and friendly territory. Demonstrating our success would weaken the international appeal of the terrorist group because local groups are drawn to the al Qaeda brand name for its global cachet; or to put it another way, the affiliated individuals and groups join up to be part of a larger successful cause. Group psychology—being part of a successful al Qaeda movement—becomes more important than the individual judgment (and possibly more cautious behavior) of any one individual or local group.[23] Or to use a different analogy, the al Qaeda leadership acts like venture capitalists in the broader terrorist movement.[24] An equally apt metaphor is of a large corporation (for example, McDonalds, Starbucks, etc.) that is willing to lend its brand name to local "franchises" on the condition that the local groups abide by certain standards of behavior, share profits with the parent organization, and periodically report back to the corporate office for direction. Senior al Qaeda leaders do not direct or control all operations but instead solicit ideas from affiliated groups or entrepreneurial individuals. As these operations develop, al Qaeda leaders provide inspiration and occasional oversight and correction of those

[23] Gerald Post, "Psychological and Motivational Factors," 273.

[24] Bruce Hoffman, "Rethinking Terrorism and Counterterrorism since 9/11," *Studies in Conflict and Terrorism* 25 (September–October 2002): 303–316.

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groups.[25] Failure of individual franchises or the corporate headquarters degrades the franchise name.

Operational difficulties. Successful attacks help maintain the movement's allure and its ability to recruit and inspire martyrdom in its recruits. Thwarting terrorist attacks decreases that allure. The key problem with effective defenses, of course, is that they are tremendously expensive and are rarely perfect. Increased port and rail security, for example, is widely seen as a necessary defensive measure, but the United States has yet to implement the required procedures, due to their cost. Another long-term, deterrence-by-denial initiative could involve threatening a terrorist group's standing in its religious community as a way of ensuring that existing regimes are not overthrown in favor of fundamentalist rule. Unfortunately for opponents of terrorism, there is no accepted cannon of religious law or church hierarchy in the Muslim world that could be turned against proponents of mass-casualty terrorism. Individual Muslims are free to make religious decrees, or *fatwas*, regardless of their formal training or standing as an Islamic scholar. Western states have made little headway in convincing the majority of Muslim clerics to discredit these terrorists.

Unintended consequences. Deterrence by denial can produce unintended consequences. Increasing defenses in one area may divert attacks to softer targets rather than deterring the attacks altogether.[26] This would seem to be especially true of a terrorist WMD attack. Or consider that maintaining a Western presence in the Islamic world would serve to deny terrorists another of their goals. Yet a long-term presence can actually backfire. In the three-and-a-half years since the beginning of the Iraq war, a large military presence in Iraq arguably has galvanized the jihadists against the United States rather than deterring terrorist attacks.[27]

Deterrence by denial thus suffers from many of the same problems as deterrence by punishment, if to a different degree. Deterrence by punishment challenges our moral code; it requires better intelligence to find terrorists and near-perfect homeland defenses so that we could dare to withhold going after terrorists absent attacks. None of this is likely in the near term. Deterrence by denial is only slightly more attractive.[28] Denial does not require us to make the difficult choice between deterrence and degrading the terrorists' capabilities. Indeed, attrition of terrorist capabilities complements a deterrence-by-denial

[25] David Jones, Michael Smith, and Mark Weeding, "Looking for the Pattern: Al Qaeda in Southeast Asia—The Genealogy of a Terror Network," *Studies in Conflict and Terrorism* 26 (November–December 2003): 443–457.

[26] Bonner and Van Natta, "Regional Terrorist Groups"; Hoffman, "Leadership Secrets."

[27] Dana Priest, "Iraq New Terror Breeding Ground: War Created Haven, CIA Advisers Report," *The Washington Post*, 14 January 2005.

[28] Lepgold, "Hypotheses on Vulnerability," 144.

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strategy. Both weaken a terrorist group's ability to achieve its goals and, by extension, weaken its appeal in the Muslim world and ultimately, threaten the group's continued existence. Yet at the same time, denial strategies suffer from operational problems (that is, there is no such thing as a perfect defense) and can lead to undesired consequences, such as attracting more adversaries through a greater presence in the Middle East. In sum, additional actions are needed to decrease the likelihood of WMD attacks against the United States or U.S. interests.

Deterring Organized Crime

Preventing WMD from falling into the hands of terrorists is a crucial—perhaps *the* crucial—step in preventing a terrorist WMD attack absent perfect defenses.[29] Even if there is little chance of deterring those terrorists who would actually launch WMD attacks, we may still be able to cut off the supply of WMD material by threatening those who fund or supply WMD or technical expertise to terrorist groups. Indeed, if most terrorist groups lack the expertise to build their own WMD, our focus should be on how a terrorist group could acquire such weapons.

I concentrate on transnational criminal groups because they are arguably the crucial and most likely intermediaries between suppliers of WMD material and terrorist end-users.[30] According to Lyudmila Zaitseva and Kevin Hand, the vast majority of WMD suppliers are not governments or government-sanctioned entities. Instead, they are individual civilians, rogue military personnel and security officials who operate WMD production and storage facilities. So-called rogue states are unlikely to transfer WMD materials to nonstate actors, because such states will not want to part with the few weapons or weapons components they possess; they would risk international condemnation, sanctions, or worse if they were caught, and would have little if any control over how those weapons might be used, to include against their own territory. Amateur suppliers, on the other hand, tend not to have the contacts or expertise to transport and sell WMD materials to terrorist groups.

The most effective and dangerous intermediaries are organized criminals, who seek to acquire WMD from suppliers (either through bribes or coercion) and then sell them for a profit to states and terrorists.[31] The danger is that in searching for profits, a crime group could sell WMD, component parts, or delivery vehicles to a terrorist group. That is because "the most common type of relationship between criminal organizations and terrorist groups is likely to

[29] Charles Ferguson and William Potter, *The Four Faces of Nuclear Terrorism* (Monterey, CA: Monterey Institute of International Studies, 2004), 6–11.

[30] Gavin Cameron, "Weapons of Mass Destruction Terrorism Research, Past and Future" in Andrew Silke, ed., *Research on Terrorism* (Portland, OR: Frank Cass, 2004), 72–90.

[31] Zaitseva and Hand, "Nuclear Smuggling Chains," 832.

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be simply a matter of business and involve supplier–customer dealings."[32] Deterring such behavior is the subject of the remainder of this article.

Deterrence by Punishment

The literature on crime and deterrence suggests that there is significant promise in using threats of punishment to deter transnational criminal groups or arms traffickers from acquiring, transporting, and then distributing WMD to terrorists. Beginning with the work of Gary Becker in the late 1960s, a large number of studies suggest that domestic crime rates are "a negative function of the probability and expected severity of criminal sanctions."[33] In other words, enforceable criminal penalties have a deterrent effect on crime, at least when the criminal is capable of evaluating the risk of being caught, the severity of threatened punishment, the expected gains from the crime, and the need for those expected gains.[34] Perhaps that is why the deterrent effect of punishment is less pronounced when violent crime is compared to property crime, in that violent crimes are often crimes of passion.[35] The deterrent effect of punishment is also less pronounced in localities suffering from severe corruption, which again is consistent with the assumption that most criminals are capable of reasoned calculation as to the expected risks, costs, and benefits of crime.[36]

The above begs the question as to whether behavioral patterns—and the prospects for deterrence—are similar between transnational criminal groups and more-mundane domestic criminals engaged in nonviolent crime. For our purposes, the crucial factor is the motivation of each group. If both types of criminal groups are reasoning entities, as opposed to behaving in response to gross passions, and both groups have similar motivations, then we might expect transnational criminals and traffickers to be deterred by increases in the likelihood of being caught or the severity of expected punishment once they are caught, just as their domestic counterparts are deterred by such threats.

[32] Phil Williams, "Terrorism and Organized Crime" in Brad Roberts, ed., *Hype or Reality? The New Terrorism and Mass Casualty Attacks* (Alexandria, VA: Chemical and Biological Arms Control Institute, 2000), 137; Mark Phythian, "The Illicit Arms Trade: Cold War and Post-Cold War," *Crime, Law and Social Change* 33 (March 2000), 1–52.

[33] William Niskanen, "Crime, Police, and Root Causes" (Cato Policy Analysis No. 218, The Cato Institute, Washington DC, 14 November 1994). For earlier works on the subject, see: Gary Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy* 76 (March–April 1968): 169–217; Isaac Erlich, "Participation in Illegitimate Activities," *Journal of Political Economy* (May–June 1973): 521–567; Steven Craig, "The Deterrent Impact of Police," *Journal of Urban Economics* 21 (May 1987): 298–311; William Trumbull, "Estimation of the Economic Model of Crime Using Aggregate and Individual Level Data," *Southern Economic Journal* 26 (October 1989): 423–439.

[34] Larry Siegel, *Criminology*, 4th ed. (St. Paul, MN: West Publishing, 1992): 131–133.

[35] Niskanen, "Crime, Police, and Root Causes"; Siegel, *Criminology*, 133.

[36] Maurice Kugler, Thierry Verdier, and Yves Zenou, "Organized Crime, Corruption and Punishment" (working paper, The Research Institute of Industrial Economics, Stockholm, Sweden, 2003).

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The literature on transnational crime and arms trafficking suggests that this is indeed the case. There is widespread agreement that transnational criminals are motivated predominately by profit and personal power, just as are domestic perpetrators of property crimes.[37] As Mark Pythian notes, "To a significant extent the [arms] trade has been depoliticized since the end of the Cold War, with involvement now motivated more by profit than policy considerations."[38] A number of people are attracted to the arms trade "who see it as a way of getting rich quickly."[39] For instance, A.Q. Khan is said to have been motivated by personal avarice—to the tune of an alleged $40 million personal fortune—and only secondarily by a sense of loyalty to the Muslim world.[40] Another example is Victor Bout, who works out of the former Soviet Union and, by some accounts, is the world's biggest arms trafficker after only fifteen years in the business. He is said to be motivated by money, not ideology, and is willing to sell arms to anyone (he is reported to have made a $50 million profit from an arms sale to the former Taliban regime in Afghanistan).[41] In the words of a Bout associate, "He's not here to change the world."[42] Indeed, the continued viability of the Western world is crucial for organized crime's very existence, as a source of expertise, financing, and materiel. In a crude sense, these groups are parasites on the modern world.

The implication, then, is that criminal groups should be susceptible to deterrence, even if religiously oriented terrorists are not.[43] Transnational criminals look for business opportunities that provide large payoffs with minimal risks and therefore should be much more susceptible to coercion and much less likely than religious terrorists to sacrifice their own lives for their cause.[44] After all, it is

[37] Bartosz Stanislawski and Margaret Hermann, "Transnational Organized Crime, Terrorism, and WMD" (paper prepared for the Conference on Non-state Actors, Terrorism and Weapons of Mass Destruction, College Park, MD, Center for International Development and Conflict Management, University of Maryland, 15 October 2004); Zaitseva and Hand, "Nuclear Smuggling Chains," 827–833; Phil Williams and Roy Godson, "Anticipating Organized and Transnational Crime," *Crime, Law and Social Change* 37 (June 2002): 311–355; Berryman, "Russia and the Illicit Arms Trade."

[38] Phythian, "The Illicit Arms Trade," 1.

[39] Ibid., 2.

[40] "Pakistan's Nuclear Secrets Sold," 6 February 2004, accessed on the website of *The Economist* at http://www.economist.com/world/asia/displaystory.cfm?story_id=E1_NOTNJSG, 11 October 2006; William Broad, David Sanger, and Raymond Bonner, "A Tale of Proliferation: How Pakistani Built His Network," *The New York Times*, 12 February 2004; Paul Haven, "Pakistan Nuke Scientist Bought Loyalty," Associated Press, 17 February 2004.

[41] Zaitseva and Hand, "Nuclear Smuggling Chains," 831.

[42] Peter Landesman, "Arms and the Man," *New York Times Magazine*, 17 August 2003, 57.

[43] For a summary of the differences between these two types of groups, see Williams, "Terrorism and Organized Crime." For an argument that the two groups are growing increasingly similar, see Thomas Sanderson, "Transnational Terror and Organized Crime," *SAIS Review* 24 (Winter 2004): 49–62; Tamara Makarenko, "A Model of Terrorist-Criminal Relations," 1 August 2003, accessed at *Jane's Intelligence Review*, at www.janes.com, 4 October 2006; Jane Schneider and Peter Schneider, "The Mafia and Al-Qaeda: Violent and Secretive Organizations in Comparative and Historical Perspective," *American Anthropologist* 104 (September 2002): 776–783.

[44] Williams and Godson, "Anticipating," 325; Lepgold, "Hypotheses on Vulnerability," 140.

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impossible to enjoy the benefits of material wealth if you are dead. Instead, the leaders of criminal organizations prioritize their needs: their own safety and wealth first, then the continued viability of their organizations, and finally, their specific merchandise and personnel.[45] So while these individuals and groups may be willing to develop, transport, or steal a WMD device and sell it to rogue states or terrorist groups, they are unlikely to risk getting caught in an overly dangerous ploy, to say nothing of risking injury or death by detonating the WMD device themselves.[46] Members of transnational crime groups, therefore, should be vulnerable to deterrence threats that threaten their livelihood, freedom, or very existence. That said, as with any deterrence initiative, basic requirements must be met to increase the chances of success.

Identifying the opponent. Knowing whom we are trying to deter is the first requirement for deterrence by punishment. In general, we would like to deter all organized crime groups from trafficking in WMD or WMD-related technologies. Yet no state can unilaterally gather the necessary intelligence to identify every known and emerging WMD trafficker. Demonstrating publicly that other states will share intelligence on WMD smuggling is thus a crucial element in any deterrence-by-punishment strategy. Norms of cooperation on that front are still in their formative stages (see below) and are hampered by the tolerance shown by much of the industrialized world to the clandestine shipment of conventional arms. A lack of transparent intelligence sharing, unless corrected, will complicate the task of making credible deterrence threats against those criminals who traffic in WMD.

Transnational criminal groups are often intertwined with legitimate governments and government officials, which complicates multilateral coordination and hinders intelligence cooperation. Remember that in the literature on domestic crime, an important finding is that judicial and police corruption can increase crime rates rather than deter crime.[47] International WMD traffickers can attempt to influence government officials through payoffs and threats. Traffickers can even be part of existing governments. In some instances, traffickers are a key revenue source for local (and even national) economies. A.Q. Khan's proliferation network used each of these techniques. Kahn was a high-ranking official in control of a large government program. The secret nature of his work made him immune from outside scrutiny. He is reported to have engaged in extensive bribes and payoffs to maintain the loyalty of government officials, subordinates, and journalists.[48] Khan had the alleged support of two high-ranking army generals, both of whom supposedly authorized his sales to rogue states.[49]

[45] Williams and Godson, "Anticipating," 337–338.
[46] Dolnik, "Die and Let Die," 29.
[47] Kugler, Verdier, and Zenou, "Organized Crime," 4.
[48] Haven, "Pakistan Nuke Scientist."
[49] Tohid, "Pakistan and Its Proliferator; "Pakistan's Nuclear Secrets Sold."

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His subordinate, Bukhari Tahir, was a well-connected businessman in Malaysia who used his businesses as a cover for his smuggling operation. He and his immediate family insulated themselves from scrutiny by partnering with members of the ruling elite—including members of the prime minister's and foreign minister's families—on these legitimate business ventures.[50]

Tangible progress must occur in international cooperation if we are to credibly deter potential traffickers in WMD. Working in favor of deterrence is the fact that WMD are in a category different from most trafficking (that is, guns, drugs, or people), and states realize that WMD sales can come back to haunt a government that looks the other way. We also can overcome international resistance to investigations (and possible punishment) of potential WMD traffickers through the use of rewards and punishments. An initiative containing both would be for governments to pledge not to publicize information on WMD thefts or smuggling that might occur on another country's soil, so long as that country immediately notified its international partners. Keeping the information out of the public light would decrease the international stigma that might attach to a country that cannot control its own technology. In return, however, we would demand full (if private) disclosure of all relevant information associated with the smuggling. The implicit threat here would be the public disclosure of the theft—and perhaps even military reprisals—if we found out about it before being notified. Another use of rewards and punishments for improving international cooperation would be to link foreign assistance to intelligence sharing. States that cooperated fully on intelligence matters would get modest increases in foreign assistance. States that withheld information would get less assistance. Each measure would improve international cooperation and, by extension, increase the threat to punish traffickers in WMD and related materials.

How to retaliate. The second requirement of deterrence by punishment is to know what the opponent values and to hold that at risk. As noted earlier, leaders of organized crime groups are motivated by a desire for profit and personal power, and less so by the organization's future viability and specific merchandise or underlings. The key to a deterrence-by-punishment strategy is realizing that organized crime groups "as business people can presumably be induced to stop or change locations if the operating costs become too great."[51] The lives of individual leaders and their physical assets (homes and property, yachts and planes, etc.) are particularly attractive targets to threaten with retaliation, seizure, or confiscation. Secondary targets of retaliation might include the distribution facilities, warehouses, and transportation assets needed to smuggle precursor chemicals or WMD technology such as centrifuges. Other targets could include any legitimate firm owned or invested in by criminal leaders.

[50] Broad, Sanger, and Bonner, "A Tale of Proliferation."
[51] Lepgold, "Hypotheses on Vulnerability," 140.

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Credible will and capabilities. Arguably, the most difficult task of deterrence by punishment is to demonstrate the capability and will to credibly implement threatened reprisals. There is no doubt that modern states have the military capabilities to strike individual criminal leaders and facilities used to traffic in WMD. On the financial front, the United States and its allies now have a much greater capability to freeze financial assets, compared to their capabilities before 11 September 2001. Two issues remain outstanding, however, both related to demonstrating our credible will to implement our deterrence threat. They are first, demonstrating to traffickers that they cannot escape threatened punishment through the protection of corrupt officials, justices, or police, and second, establishing the necessary international regimes to routinize international cooperation against WMD traffickers.

The key to solving these problems is to strengthen existing international norms against the trafficking in WMD with an international legal framework that requires international cooperation on WMD trafficking and legitimizes a military response, not just a judicial response, to discoveries of trafficking. Such a combination should decrease the opportunities for corruption while increasing the domestic and international impediments to corruption. Two recent initiatives establish precedents for such a normative and legal framework: the May 2003 Proliferation Security Initiative (PSI) and the passage of UN Security Council (UNSC) Resolution 1540 in April of 2004.

The PSI is an informal agreement among fifteen nations that establishes informational exchanges and cooperation on interdiction of WMD and delivery technologies.[52] Originally announced on 31 May 2003 and agreed upon by eleven founding states on 4 September 2003, the PSI focuses on three main tasks:

- Undertaking effective measures, either alone or in concert with other states, for interdicting the transfer or transport of WMD, their delivery systems, and related materials to and from states and nonstate actors of proliferation concern;
- Adopting streamlined procedures for rapid exchange of relevant information concerning suspected proliferation activity;
- Reviewing and working to strengthen their relevant national legal authorities where necessary to accomplish these objectives.[53]

[52] Department of State, "Proliferation Security Initiative Frequently Asked Questions," 26 May 2005, accessed at www.state.gov/t/isn/rls/fs/46839.htm, 4 October 2006. See also: Michael Byers, "Policing the High Seas: The Proliferation Security Initiative," *American Journal of International Law* 98 (July 2004): 526–540; Chaim Braun and Christopher Chyba, "Proliferation Rings: New Challenges to the Nuclear Nonproliferation Regime," *International Security* 29 (Fall 2004): 5–49; Ferguson and Potter, *Four Faces*, 323; Michael Evans, "U.S. Plans to Seize Suspects at Will," *London Times*, 11 July 2003; and "Eleven Countries Join Forces to Combat the Trade in Weapons of Mass Destruction," *London Financial Times*, 11 July 2003.

[53] Department of State, "The Proliferation Security Initiative: Statement of Interdiction Principles," 4 September 2003, accessed at www.state.gov/t/isn/rls/fs/23764.htm, 4 October 2006.

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The PSI now boasts fifteen current partner states, four of which are permanent members of the UN Security Council. Sixty additional nations have agreed to more limited cooperation with PSI states on a case-by-case basis. By the end of 2004, at least twenty public multilateral interdiction exercises had been held. Liberia, Panama, and the Marshall Islands, countries that serve as flags of convenience for innumerable foreign vessels, have agreed to allow their flagged vessels and aircraft to be boarded and inspected by PSI nations if suspected of transporting WMD.[54]

The PSI is both defensive and deterrent in nature.[55] In the case of an imminent threat from a WMD shipment, PSI states can participate directly in "defensive" interdiction, ask other PSI nations to do so, or coordinate in other ways as warranted. Within its first year of existence, according to Dr. Mitchell Reiss, the former Director of the State Department's Office of Policy Planning, "cooperation among PSI partners has resulted in the seizure of shipments of sensitive materials," the most famous of which was the *BBC China,* caught transporting WMD equipment to Libya.[56] In terms of deterrence, the Bush administration argues that "over time, proliferators, and others involved in supporting proliferation activities, will learn that there are countries determined to work together to take all possible steps to stop their efforts."[57] Indeed, Reiss has argued that "it is thought that the existence of the PSI has deterred many [WMD trafficking] attempts due to fears of being caught."[58]

The PSI was soon followed by the passage of UNSC Resolution 1540, which called upon states to "adopt and enforce appropriate, effective laws which prohibit any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery." It also called upon states to "develop and maintain appropriate, effective border controls and law enforcement efforts" to prevent the illicit trafficking in these materials.[59]

[54] Sean Murphy, "Proliferation Security Initiative for Searching Potential WMD Vessels," *American Journal of International Law* 98 (April 2004): 355–357; Jofi Joseph, "The Proliferation Security Initiative," *Arms Control Today* (June 2004) accessed at www.armscontrol.org/act/2004_06/Joseph.asp, 4 October 2006; Andrew Winner, "The Proliferation Security Initiative: The New Face of Interdiction," *Washington Quarterly* 28 (Spring 2005): 129–143. For an example of the flag of convenience agreements, see Department of State, "Proliferation Security Initiative Ship Boarding Agreement with Panama," 12 May 2004, accessed at www.state.gov/t/isn/trty/32858.htm, 4 October 2006.

[55] Winner, "Proliferation Security Initiative," 134.

[56] Mitchell Reiss, "Steps to a Brighter Future: The Bush Administration's Non-Proliferation Policy," 21 June 2004, accessed at www.state.gov/s/p/rem/34267.htm, 4 October 2006; Winner, "Proliferation Security Initiative," 137.

[57] Department of State, "What is the Proliferation Security Initiative?" 26 May 2005, accessed at www.state.gov/t/isn/rls/other/46858.htm, 4 October 2006.

[58] Reiss, "Steps to a Brighter Future."

[59] Sean Murphy, "UN Security Council Resolution on Nonproliferation of WMD," *American Journal of International Law* 98 (July 2004): 606.

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UNSC 1540 is an important development on a number of fronts. First, it requires states to enact strong national controls over WMD and related materials, as well as to "address the threat posed by non-state actor involvement in any aspect of WMD proliferation," through improved border controls, law enforcement capabilities, and related initiatives.[60] Second, the resolution provides international legal authorization for PSI-related interdiction of WMD trafficking. According to the State Department, "If an activity is authorized under a UNSC resolution, then it could be cited by a PSI participant as authority for its participation in an interdiction. ... UNSC 1540 and the PSI SOP are mutually reinforcing and are legally and politically compatible."[61] Third, the resolution requires that states compile regular, comprehensive reports on their efforts at complying with UNSC 1540. A nonproliferation committee of Security Council members has been constituted to receive these reports. Security Council members can, at their discretion, enforce compliance with the resolution's reporting requirement or other terms of the resolution under Chapter VII of the UN Charter. And while the Bush administration does not envision having to enforce UNSC 1540 requirements, they have made it plain that they are willing—and have the international legal authority—to do so if necessary.[62]

Combined, these initiatives provide the practical and international legal basis for action against WMD traffickers by both the military and law enforcement community of every UN member state, with additional, self-imposed enforcement responsibilities taken on by the PSI nations. Moreover, these combined initiatives are promising signs of an emerging international norm against the trafficking in WMD and related materials. Both developments should increase the possibilities of international cooperation in opposition to WMD trafficking. Although it is impossible to know definitively as of this writing, together these and related initiatives (that is, the Cooperative Threat Reduction [CTR], Export Control and Related Border Security Assistance, the Terrorist Interdiction Program, and the G-8's Global Partnership initiative) also may very well have increased the perceived costs of trafficking in WMD.

Operational difficulties. As promising as the aforementioned initiatives are, why should we believe that deterring WMD trafficking can be any more successful than our abysmal record at deterring drug trafficking? Indeed, after decades of the war on drugs, with billions spent on eradication and interdiction, illegal drugs trafficked to the United States actually cost less on the street than they did twenty years ago, signifying a relatively unfettered market. If we cannot stop or deter tons of drugs from coming across the border each year, how

[60] Andrew Semmel, "UN Security Council Resolution 1540: The U.S. Perspective," 12 October 2004, accessed at http://www.state.gov/t/isn/rls/rm/37145.htm, 11 October 2006.

[61] Department of State, "Proliferation Security Initiative Frequently Asked Questions."

[62] Ibid.

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are we to deter WMD trafficking? Our dilemma is summarized by the joke that asks "How do you smuggle a nuclear bomb into the country?" and answers "You stuff it inside a bag of pot!"

There are a number of differences between drug trafficking and trafficking in WMD, however, which call into question comparisons across the two issue areas. The demand for drugs is very different from the demand for WMD materials. Of the three most commonly trafficked drugs (heroin, cocaine, and marijuana) two are extremely addictive and are used by millions worldwide. The demand for the third, marijuana, is even higher, to say nothing of being extremely common across the globe. A 2003 survey found that in the United States alone, roughly 46 percent of the population aged twelve and older (over 110 million people) had used illegal drugs at least once in their lifetimes, and of those, almost 35 million people had used illegal drugs in the last year.[63] According to a 2005 Congressional Research Service (CRS) report, "more than 14 million Americans buy illicit drugs and use them at least once per month."[64] In 2003, the UN estimated that the total annual number of drug abusers worldwide aged fifteen and over was at least 200 million people.[65] Demand for WMD and related materials is much, much less, by several orders of magnitude.

There is a huge supply of illicit drugs, swamping anything related to WMD. And while WMD supplies are concentrated in relatively select parts of the world and are technologically challenging to store safely, the supply of drugs is very diffuse and requires rudimentary technology to produce and store. Drug production is technically easy, can be accomplished at low cost, and can be shifted from locale to locale with relatively little effort. As a result, worldwide production of opium, coca, and marijuana has risen dramatically over the last decade.[66] According to CRS, "World production and supply of illicit drugs vastly exceeds world demand."[67] The same is not true of WMD materials. If anything, the supply of such materials is being constricted, albeit slowly, through CTR programs.

Enforcement is extremely variable across the globe when it comes to illicit drugs, in large part because there is little consensus on the detrimental effects of drug use.[68] Consider that while the U.S. federal government has stiff penalties for drug production and use, U.S. localities have challenged those guidelines in a number of instances. International enforcement is at least as variable. Casual

[63] U.S. Department of Health and Human Services, "Results from the 2003 National Survey on Drug Use and Health: National Findings," September 2004, accessed at www.drugwarfacts.org/druguse.htm, 17 January 2005.

[64] Raphael Perl, *Drug Control: International Policy and Approaches, CRS Issue Brief IB88093* (Washington DC: Congressional Research Service, 13 April 2005), 1.

[65] UN Office on Drugs and Crime, "Global Illicit Drug Trends 2003" (Vienna, Austria, June 2003) accessed at www.drugwarfacts.org/druguse.htm, 17 January 2005.

[66] Perl, *Drug Control*, 1.

[67] Ibid., 8.

[68] Ibid., 5.

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drug use is a relatively accepted—and even legal—behavior in many Western countries, including Spain, Italy, Portugal, Luxembourg, and Denmark. In contrast, there is a growing, perhaps near-global, consensus that trafficking in WMD harms everyone, regardless of their locality, as witnessed by UNSC Resolution 1540.

Enforcement of anti–drug-trafficking initiatives also is harmed because of the relatively low priority that drug policy has in many nations. Consider that U.S. anti-drug initiatives at the federal level are routinely countermanded when they contradict or complicate higher priority foreign policy initiatives, such as counter-terrorism or counter-proliferation policies. As an example, consider that the United States has resisted labeling North Korea as a state sponsor of drug trafficking because such a designation would "prioritize drugs vis-à-vis more pressing issues (i.e. nuclear proliferation)."[69] Indeed, "The direction of drug policy under President George W. Bush does not appear to be an immediate top foreign policy priority for the administration."[70] Enforcement of anti–WMD trafficking, on the other hand, is a very high priority for the United States and other world powers, making it less likely that participation in the PSI, for instance, will be subsumed by other priorities.

Finally, the combination of ample drug supplies at low cost, with high global demand and lax enforcement, means that there are enormous profits to be had in drug trafficking. Estimates in 1997 put traffickers' gross profits at roughly 300 percent.[71] According to the UN, the illegal drug business is extremely lucrative, totaling more than $400 billion in annual sales in 1997, or the equivalent of 8 percent of all annual worldwide trade that year.[72] In 2001, South American coca production alone yielded roughly $93 billion worth of cocaine.[73] As these huge annual figures demonstrate, there is a relatively proven market for the drug trade. The same cannot be said for trade in WMD materials. It is true that there may be substantial payoffs for the successful trafficking of WMD materials, but they do not come anywhere near the huge amounts of money available through the drug trade. Moreover, the WMD market is far less certain than is the drug market.

For all these reasons, the analogy between the drug trade and WMD trafficking is a flawed one. There are significant differences between WMD and drug trafficking, differences that make problematic a comparison of the two

[69] Raphael Perl, *Drug Trafficking and North Korea: Issues for U.S. Policy, CRS Report RL32167* (Washington DC: Congressional Research Service, 4 March 2005), 2.

[70] Perl, *Drug Control*, 12.

[71] Associated Press, "U.N. Estimates Drug Business Equal to Eight Percent of World Trade," 26 June 1997, accessed at www.drugwarfacts.org/druguse.htm, 17 January 2005.

[72] United Nations Office for Drug Control and Crime Prevention (UNODCCP), *Economic and Social Consequences of Drug Abuse and Illicit Trafficking* (New York: UNODCCP, 1998), 3, accessed at www.drugwarfacts.org/druguse.htm, 17 January 2005.

[73] Perl, *Drug Control*, 2.

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behaviors (and by extension the low probability of deterrence success against drug traffickers as a surrogate measure for deterrence success against WMD traffickers). There is no denying that significant obstacles still remain in crafting and implementing a strategy to deter WMD trafficking, but such obstacles are not nearly as severe as those confronting anti-drug policy-makers.

Deterrence by Denial

Denying criminal goals. A deterrence-by-denial strategy rests on preventing criminal groups from profiting due to WMD smuggling. In theory, erasing profits could be achieved by increasing the supply of goods on the market (reducing prices), increasing the seller's transaction costs (reducing profit per unit sold), or reducing the demand for the goods (driving down prices). In reality, the first option is self-defeating. Flooding the WMD market runs counter to decades of nonproliferation policies, to say nothing of increasing the chances of a terrorist group acquiring WMD. The last option may be impossible in the short run. Religious extremists will continue waging war against modern secular nation-states for the foreseeable future. We are left with the middle option of reducing WMD traffickers' profits by increasing their potential or perceived costs of doing business. Interdiction holds some promise on that score, as does expanding the CTR initiative, which would increase state control of loose WMD materials. The aforementioned PSI and UNSC Resolution should facilitate efforts on both counts.

Another means of decreasing traffickers' profits is to raise doubts as to the loyalty of their members or the fidelity of other groups they do business with. As doubts increase on either score, so too should the perceived risks of trafficking in WMD, either deterring outright such potential traffickers or increasing their transaction costs to the point that they believe there is no profit in dealing in WMD. How one would go about sowing distrust would depend on the specific organization of a particular group or network of groups.

Organizationally, criminal groups can resemble multinational corporations, in that the groups often are transnational in scope, with different elements or branches of the umbrella organization working in different countries, focusing on different tasks, but all working toward the same profit goal. Different divisions of the larger corporation focus on specific tasks. Victor Bout seems to have developed such a corporate scheme based on personal loyalty.[74] Each element or division is connected to their superiors by ties of loyalty, whether based on familial or kinship ties, shared formative experiences, or shared ethnicity.[75] In such groups, trust and intragroup bonding are extremely

[74] Landesman, "Arms and the Man."

[75] The above reasoning is similar to social explanations of organized crime, as detailed in Williams and Godson, "Anticipating," 328–331.

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important. Defections from such organizations, or even rumors of possible defections, have the potential to fundamentally challenge the functioning of such organizations, greatly decreasing profits.[76]

Criminal groups also can operate like contractors and subcontractors. Think of individual criminal firms as relatively independent actors providing expertise in a particular area. Some launder money. Some provide weapons, weapons materials, or weapons design. Some ship goods. Cooperation between firms is on a tactical or contract basis, with the goal being to maximize individual profits regardless of whether the other firms turn a profit.[77] Cooperation between these groups is enhanced, although by no means assured, if the groups share "similar criteria of selectivity, etiquette, lexicon, and ritual practice."[78] But even then, nothing prevents any single firm from profiting at the expense of former associates when an individual contract is complete.[79] Moreover, subcontractor networks have ties to legitimate business firms to hide their activities, which gives authorities another potentially vulnerable point of access to the criminal network.[80]

Many of the entities associated with A.Q. Khan fit the contractor–subcontractor model. Khan's proliferation network relied on the financial acumen of Bukhari Tahir, who ran legitimate businesses but also operated as Khan's chief financial officer, money launderer, and salesman. Engineers from Switzerland and England provided expertise. British, Dutch, French, German, Malay, and Turkish firms supplied high-tech parts. Africa was a source for raw materials. Companies in Dubai acted as the hub for transshipments of goods and money.[81] In the words of a senior American official, "First, [Khan] exploits a fragmented market and develops a quite advanced nuclear arsenal. Then he throws the switch, reverses the flow and figures out how to sell the whole kit, right down to the bomb designs, to some of the world's worst governments."[82]

With either the transnational groups or the contractor–subcontractor networks, deterrence by denial seeks to exploit concerns about loyalty as well as the competitive nature of the criminal market. We face an easier task of sowing

[76] Williams and Godson, "Anticipating," 334.

[77] Ibid., 327.

[78] Schneider and Schneider, "The Mafia and Al-Qaeda," 780.

[79] Williams and Godson, "Anticipating," 334; Alison Jamieson, "Transnational Organized Crime: A European Perspective," *Studies in Conflict and Terrorism* 24 (September–October 2001): 377–387.

[80] Williams and Godson, "Anticipating," 343.

[81] David Albright and Corey Hinderstein, "Unraveling the A.Q. Khan and Future Proliferation Networks," *The Washington Quarterly* 28 (Spring 2005): 111–128; Braun and Chyba, "Proliferation Rings"; Slevin, Lancaster, and Khan, "Seven Nations"; Broad, Sanger, and Bonner, "A Tale of Proliferation"; Raymond Bonner, "Salesman on Nuclear Circuit Casts Blurry Corporate Shadow," *The New York Times*, 18 February 2004.

[82] Quoted in Broad, Sanger, and Bonner, "A Tale of Proliferation"; see also Slevin, Lancaster, and Khan, "Seven Nations"; David Sanger and William Broad, "From Rogue Nuclear Programs, Web of Trails Leads to Pakistan," *The New York Times*, 4 January 2004.

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distrust within a contractor–subcontractor relationship than we do with the transnational groups, but we can take advantage of the competitive criminal marketplace to change either group's perceptions of WMD profitability. For instance, publicly threatening death, incarceration, or asset seizure against all groups we believed could *potentially* engage in WMD trafficking, should we have proof of trafficking by any one group, would give rival groups and contractor–subcontractors an incentive to monitor and police each other in the hopes of forestalling our action. This could be an especially effective incentive for established conventional arms traffickers—particularly in the former Soviet Union, where there is a history of infighting among criminal groups—to police their smaller, less-well-known, and perhaps more risk-accepting competitors who might be tempted to traffic in WMD.[83]

Conclusion

A terrorist group armed with WMD is arguably the greatest threat to the United States and its allies in the current era. The idea of a terrorist movement such as al Qaeda possessing WMD is particularly terrifying, given the difficulties associated with deterring religiously oriented terrorists. Given those difficulties, this paper explored deterrence of arms traffickers and transnational organized crime as a potential means of preventing terrorist groups such as al Qaeda from acquiring WMD materials. The profit motive of criminal groups makes them susceptible to threats of punishment. In some cases, their notoriety makes their leaders relatively easy to locate. More generally, UNSC Resolution 1540 makes it a global crime to traffic in WMD materials or delivery systems, demands improvements in border controls and internal security over WMD materials, and sets the legal framework for future interdiction and punishment. Indeed, UNSC Resolution 1540 nicely complements the PSI's procedures for interdicting potential WMD traffickers. Each of these measures, together with existing procedures allowing for the seizure of financial assets and with possible future efforts to sow distrust within and between criminal groups, increases the potential penalties associated with smuggling WMD. They also have a possible spillover effect to help deny criminal groups the profits they need to stay in business. In sum, transnational criminal groups and arms traffickers are susceptible to deterrence by punishment and denial.

The strategy advocated here cannot make the world safe from terrorist movements such as al Qaeda, yet we can partially defang the movement by deterring the transfer of WMD to al Qaeda and other terrorist groups. Implementing such a strategy will require placing a larger emphasis on the nonmilitary instruments of national power than does current U.S. policy. Intelligence

[83] Vsevolod Sokolov, "From Guns to Briefcases: The Evolution of Russian Organized Crime," *World Policy Journal* 21 (Spring 2004): 68–75.

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and law enforcement play crucial roles in finding, infiltrating, and disrupting organized crime groups that could supply WMD and WMD technology to terrorists. Covert operatives and psychological operations will be required to sow distrust among trafficking groups or even turn these groups against each other. Careful diplomacy will be required to see the implementation of UNSC 1540 to fruition, to say nothing of making the PSI a meaningful, long-term, collective effort. The continued use of economic pressure and targeted action will be crucial to undercutting the profits associated with WMD smuggling, as will the provision of foreign assistance to cooperative states. There is obviously still a role for military force, particularly when interdiction is warranted or when disrupting a specific smuggling operation is necessary, but the lion's share of effort should be done by nonmilitary agencies. And finally, more effort should be devoted to integrating and coordinating efforts across and between governments. As the Government Accountability Office noted in January of 2005, "Strategic plans for threat reduction and nonproliferation programs are not integrated and do not address U.S. programs worldwide."[84] Integration and coordination are prerequisites for success.

Implementing this strategy will also require that we broaden our security focus beyond the fight against al Qaeda or Iraqi insurgents. Make no mistake, both are crucial tasks. Yet the reason they are crucial is due to the threat they pose to U.S. regional interests, and more importantly, to U.S. territory.[85] Deterring and disrupting the potential supply of WMD materials to either group should be a high priority for the current Bush administration and for future presidents. This article provides an initial strategy to accomplish that task.*

[84] Government Accountability Office, *Weapons of Mass Destruction: Non-proliferation Programs Need Better Integration, GAO-05-157* (Washington DC: Government Printing Office, 2005), 7.

[85] James Fallows, "Success without Victory," *The Atlantic Monthly* 295 (January/February 2005): 80–90.

* The views expressed here are those of the author and not of the National Defense University, the Department of Defense, or any other agency of the United States Government. The author thanks Audrey Cronin, Bill Jamieson, Frank Mora, Michael Mazarr, Bard O'Neill, Mitchell Reiss, Harvey Rishikof, Paula Thornhill, and the anonymous reviewers for comments on earlier drafts.

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The Fight against Terrorist Financing

ANNE L. CLUNAN

According to a well-informed former participant, the effort to combat terrorists' access to financial resources has been "the most successful part" of the global community's counterterrorism endeavor since the al Qaeda 11 September 2001 attacks on the United States.[1] Genuine success, however, hinges on U.S. ability to successfully frame terrorist financing as a collective action problem, both internally, to overcome interagency rivalries, and internationally, to overcome the benefits of free-riding behavior. This requires reframing the nascent pre-September 11 international anti-money-laundering regime as a counter-terrorist-financing regime as well as recasting the collective good of an open financial system as requiring collective management of its negative security externalities.

The norms and practices that make up the new counter-terrorist-financing frame have rapidly spread internationally in the past five years. However, the ultimate effectiveness, measured in terms of implementation and enforcement, of the new counter-terrorist-financing regime depends on states' redefinition of their national interests to include combating terrorist finance and a new understanding of the collective responses necessary to manage nonstate transnational actors. The U.S. case suggests that successful implementation of a counter-terrorist-financing regime will be much harder to achieve and to sustain than the adoption of regime norms, because even the experience of terrorist attacks appears to yield only temporary surges in a state's willingness to bear the costs of regime compliance. It is therefore unlikely that should present practices continue, countering terrorist financing will be counted a global success.

[1] Personal communication from Daniel Benjamin, former National Security Council Director for Transnational Threats during the Clinton administration, 27 September 2004. See also Thomas Kean et al., "Final Report on 9/11 Commission Recommendations," 9/11 Public Discourse Project, 5 December 2005, accessed at http://www.9-11pdp.org/press/2005-12-05_report.pdf, 16 April 2006 (hereafter 9/11 Public Discourse Project Final Report).

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The Problem of Terrorist Financing

Terrorist financing incorporates two distinct sets of financial activities. One set involves the provision of the funds required to carry out a terrorist operation. It includes funds to pay for such mundane items as food, lodging, transportation, reading materials, and audio-video equipment, as well as purchases of legal precursors for bomb making (the 2004 Madrid bombings relied on cell phones as detonation triggers, and the 2005 London bombs were homemade from legal ingredients), as well as purchase of illegal materials for operations. Such transactions, unlike money laundering, are mainly "pre-crime": they are perfectly legal until they can be linked to support for a criminal act.[2] They are also minute in terms of monetary value and therefore extremely hard to detect in the absence of other indicators regarding the identity of the persons involved. Such identity profiles raise a number of legal and civil liberties issues.[3]

The second set of terrorism-related financial activities involves the raising of funds to support terrorist operations, training, and propaganda. Funds can be raised through illicit means, such as drug and human trafficking, arms trading, smuggling, kidnapping, robbery, and arson, which are more amenable to traditional anti-money-laundering tools. Terrorists also receive funds from legitimate humanitarian and business organizations. Charities raising funds for humanitarian relief in war-torn societies may or may not know that their funds are going to terrorism. Corrupt individuals at charities or at recipient organizations may divert funds to terrorist organizations. This appears to be one of the main means through which al Qaeda raises funds. Legitimate funds are commingled with funds destined for terrorists, making it extremely difficult for governments to track terrorist finances in the formal financial system.

The difficulties inherent in tracking terrorist finance in the formal financial system are multiplied many times over as terrorists move to informal financial systems, using money remitters and *hawaladars*, who, in turn, may engage in trade-based money laundering.[4] Al Qaeda began relying on the informal financial system around 1996. Detecting terrorist finances is therefore an extremely difficult task, more difficult even than preventing money laundering.

Countering Terrorist Financing: The Need to Redefine Collective Interests

The fight against terrorist funding is tremendously complex. It requires collective action not only internationally among states but also internally among gov-

[2] Author's interview with senior official in the Office of Foreign Assets Control (OFAC), Department of the Treasury, Washington DC, 14 October 2004 (hereafter OFAC).

[3] John Roth, Douglas Greenburg, and Serena Wille, *Monograph on Terrorist Financing*, Staff Report to the National Commission on Terrorist Attacks Upon the United States (hereafter *9/11 Staff Monograph*), 11.

[4] U.S. Department of State Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report, Part II. Money Laundering and Financial Crimes* (March 2004, hereafter *INCSR 2004* and March 2005, hereafter *INCSR 2005*).

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ernment agencies and private actors. It essentially requires re-conceptualizing the public good of open financial systems as having negative security externalities that must be collectively managed. It involves the design and interaction of national economies and security agencies, as well as the political problems of achieving and sustaining cooperation among a very diverse set of public and private actors. To be effective, the international effort to combat terrorist financing requires well-functioning, transparent, and noncorrupt economies. Successfully disrupting terrorist financial flows therefore requires an appropriate anti-money-laundering legal framework regulating the formal and informal financial services industry and trade services. It demands an ability to enforce laws and collect real-time intelligence and documentary evidence on financial flows. It also requires experts properly trained in financial intelligence collection and criminal investigation, as well as prosecutors, regulators, customs agents, and bank employees.[5] Building all this institutional capacity to combat money laundering is a prerequisite for fighting terrorist financing.

However, because terrorist finance differs from money laundering, countering terrorist financing requires additional intelligence collection and analysis capacities for detecting "needles" in the financial "haystack." The remaining criterion for successfully combating terrorist financing is sustained political will to ensure that the power granted by legislation is actually matched by the capacity to implement counter-terrorist finance measures. Governments must be willing and able to share information and expertise with relative ease and speed across a number of policy domains and with public and private actors. They must also have the capacity to act quickly to disrupt and interdict funds and track the money trail to terrorists. In most cases, this cooperation must be transnational as well. All of this requires a long-term and high-level political commitment to combating terrorist finance.

Studies of international organization suggest that such profound political cooperation and organizational change requires participants to have redefined their interests.[6] Drawing on this insight, the argument made here is that such long-term and high-level commitment is only likely if top- and mid-level decision makers have re-conceptualized national security threats to include transnational financing of terrorists and if they have redefined the paradigm of security threats from one centered on nation-states to one incorporating transnational nonstate actors. Such a redefinition includes recognizing a need for

[5] Author's interviews in Washington DC with: State Department officials in the Office of the Coordinator for Counterterrorism's Counterterrorism Finance Unit (hereafter S/CT) and Bureau of International Organizational Affairs (hereafter IO), 20 and 23 September 2004, respectively; the Bureau of Economic and Business Affairs (hereafter EB) and International Narcotics and Law Enforcement (hereafter INL), 13 October 2004; Joseph M. Myers, former Director of Counter-Terrorist Financing at the National Security Council under the Bush administration, 12 October 2004; Treasury Department Financial Crimes Enforcement Network (hereafter FinCEN) official, 12 October 2004; and OFAC official.

[6] Ernst Haas, *When Knowledge Is Power* (Berkeley: University of California Press, 1990).

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transnational and national sharing of information, moving from a paradigm of "need to know" to one of "need to share," and the subsequent re-organization of subnational and international authorities and cooperative endeavors.

Such a redefinition is most likely to occur in the aftermath of domestic experience of terrorist attacks. Even then, redefinition appears episodic and short-term. It had haltingly begun to take place among top national security officials in the White House during the last years of the administration of Bill Clinton but was discarded after the change in administrations and has not taken firm hold again. This redefinition has not systematically occurred globally, even among those states most subject to threats from transnational actors. As such, the initial counter-terrorist-financing "success"—in the form of unprecedented interagency and international cooperation—has not yet translated into the redefinition of national and international interests necessary to build upon and sustain it.

The Collective Action Problem Posed by Terrorist Financing

From a theoretical perspective, countering terrorist financing is a classic collective action problem. The majority of states benefit from limiting the ability of nonstate terrorist groups to finance violent challenges to state authority and control. They also benefit from ensuring that unofficial financial flows and a nontransparent economy do not undermine investor confidence and the state's capacity to govern. More broadly, states have an interest in ensuring that the international financial system and domestic economies are not disrupted through terrorist penetration and exploitation. Yet every state has an incentive to pass the costs of constraining terrorist financing off to others, as long as the costs of doing so are less than the benefits of attracting financial clients craving secrecy and of appeasing domestic actors (including charities, casinos, banks, money services, and civil liberties advocates) who oppose government scrutiny.

Institutional Capacity

Domestically, many states, even the most developed, lack the institutional capacity for and the political interest in successful implementation and enforcement of the counter-terrorist-financing regime's norms and practices.[7] States must have the ability to ensure compliance of private-sector actors in collecting and sharing sensitive information. Well-developed and integrated interagency cooperation is required to effectively manage the sheer complexity of combating terrorist access to finances. Competing interests among those within and those outside of government make implementing international best practices politically difficult. The difficulty of intergovernmental cooperation is considerably complicated by widespread resistance among key domestic con-

[7] Author's interviews with S/CT, INL, and OFAC officials, 20 September and 12-13 October 2004.

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stituencies to increased regulation of financial activities and therefore a rejection of framing finance in terms of national security.[8]

In many countries, the political pain brought on by an effort to comply with an international regime, rather than merely adopt its standards, is deemed avoidable. States are much more likely to adopt but not enforce institutional changes, unless their calculus of the costs of nonenforcement changes. In the area of terrorist financing, we should expect such changes when the net costs of nonenforcement are raised (through the brandishing of international "carrots" and "sticks" that increase the costs to the state's reputation of being politically uncooperative and economically nontransparent, expose it to painful issue linkage and conditionality, or deny desired material incentives).[9] We should also expect such changes when states alter their definition of the problem to one of collective, not merely foreign, concern—which is most likely to occur after the domestic experience of transnational terrorist acts.[10]

Punctuated Learning

Change is likely to take the form of punctuated learning to redefine the national interest. Such learning is unlikely to be sustained without high-level attention and persuasion to maintain the new security paradigm and definition of national interests. The collective action required to create and pay for the public goods of an open and transparent financial system and constrained transnational terrorism is likely to be overpowered by free-riders for whom it is cheaper to pass the costs of such public goods on to others. In such cases, the power and ability of a hegemon or k-group—a small group of states wielding considerable power in the issue area—to set the rules of the game and impose them on free-riders through the manipulation of transactions costs and incentives is often critical to the successful provision of public goods.

The U.S. case is illustrative. As one of the centers of the international financial system, the United States is a necessary participant in the creation of a counter-terrorist-financing regime, whether as the hegemon or a member of the k-group. The United States should have considerable will after the terrorist attacks of September 2001 and capacity, in terms of expertise and resources, to domestically and internationally tackle the problem. If the United States is unable or unwilling to do so, then there is little reason to expect other countries with less motive and capacity to do so on their own.[11]

[8] Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42 (Summer 1988): 427–460.

[9] Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *The American Political Science Review* 94 (December 2000): 819–835.

[10] Ernst B. Haas, "Words Can Hurt You: Or Who Said What to Whom About International Regimes," *International Organization* 36 (Spring 1982): 207–244.

[11] Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1967/1971); and Russell Hardin, *Collective Action* (Baltimore, MD: Johns Hopkins University Press for Resources for the Future, 1982).

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To support this argument, both the international effort to suppress terrorist financing as well as the "best case" of U.S. efforts to do so are developed below. International regime theory suggests that the existence of a hegemon or a small group of powerful states that is both willing and able to promote and underwrite an international counter-terrorist finance regime is often essential for such a regime to form when states have an incentive to pass the costs of the regime off to others. Such costs exist in abundance in the area of counter-terrorist financing.[12]

Counter-Terrorist Finance Efforts before 11 September 2001

Prior to the terrorist bombings of the U.S. embassies in Tanzania and Kenya in 1998, the issue of terrorist financing was handled almost entirely either as a problem of state sponsors of terrorism, or money laundering and criminal finance by nonstate actors (primarily drug traffickers and organized crime). Efforts to curtail the flow of funds to terrorists therefore took different approaches: pressuring states to curb their support for terrorism versus ensuring that states had the domestic capacity and incentives to suppress transnational criminal networks.

The Inklings of a New, Nonstate Terrorism Paradigm

States traditionally have been seen as the sponsors of terrorism. International focus has been on pressuring states seen to be directing or supporting violent organizations. Countries have long been divided ideologically over the political motivations of such organizations, such as the Nicaraguan *contras*, the Palestine Liberation Organization, the Irish Republic Army, Hamas, and Hezbollah. As a result, states have been unwilling to define specifically what constitutes terrorism. This lack of consensus has resulted in a host of UN treaties dealing with particular terrorist acts (such as hijackings and political assassinations) rather than with terrorism in general.[13] UN Security Council (UNSC) resolutions and treaties authorizing economic sanctions (and unilateral U.S. military strikes) were used to persuade state sponsors such as Libya and Sudan to stop their support for terrorism.[14]

State sponsorship of terrorism declined after the end of the Cold War as outcasts such as Libya, Iran, Syria, and Sudan sought to reduce their international

[12] Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984); and Charles Kindleberger, *The World in Depression, 1929-1939* (Berkeley: University of California Press, 1973).

[13] For the full list of anti-terrorism conventions, see United Nations Treaty Collection, "Conventions on Terrorism," 5 January 2006, accessed at http://untreaty.un.org/English/Terrorism.asp, 5 January 2006.

[14] Chantal de Jonge Oudraat, "The United Nations and the Campaign against Terrorism," *Disarmament Forum* 1 (2004): 29–37.

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isolation. Terrorist organizations relied increasingly on other means, licit and illicit, to fund their activities.[15] Terrorists had long been involved in drug trafficking and organized crime, but until 1999, the international community had not explicitly linked these. The inability to agree on a definition of terrorism prevented the international community from including terrorist acts in many international efforts to suppress the drug trade and other transnational crime.

This gradually began to change in the late 1990s. The UN first explicitly linked the drug trade and terrorism after the UN Office for Drug Control and Crime Prevention highlighted the Taliban's levy of $15-27 million per year from taxes on opium production.[16] This reliance reduced the Taliban's susceptibility to sanctions applied to legal economic activity.[17] The Security Council demanded in Resolution 1214 (1998) that the Taliban stop its trade in narcotics. In 1999, the UNSC strengthened the linkage between terrorism and drugs when in Resolution 1333 it declared that the drug profits increased the Taliban's ability to harbor terrorists.

After the 1998 bombings of the U.S. embassies in Kenya and Tanzania, the United States and other Western states began to push for international recognition that nonstate actors were equally as complicit in supporting terrorism as states. The United States had led in getting international action on interdicting drug traffic, organized crime, and the laundering of their proceeds. While terrorist acts had been gradually incorporated into these efforts, after the 1998 bombings, the United States steered the Security Council to focus on transnational nonstate terrorism.[18] The Council passed Resolution 1267 in 1999, requiring states to impose sanctions on and freeze the assets of the Taliban for hosting al Qaeda. While this resolution reflected the traditional emphasis on targeting state sponsors (the Taliban), this was the first time the council had recognized that a transnational terrorist group was a threat to international peace and security.[19] Also in 1999, France led the UN in adopting the UN Convention on the Suppression of Terrorist Financing. This convention recognized that states had to work not only with each other but with private financial institutions to block the flow of terrorist funds. Under this convention, states are required to establish domestic legislation criminalizing terrorist financing and regulating financial industries within their jurisdiction.[20]

[15] Ilias Bantekas, "The International Law of Terrorist Financing," *American Journal of International Law* 97 (April 2003): 315–333.

[16] United Nations, "Report of the Committee of Experts appointed pursuant to Security Council Resolution 1333 (2000), paragraph 15 (a), regarding monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan," (21 May 2001) UN Doc. S/2001/511, para. 60.

[17] Oudraat, "United Nations," 31.

[18] Ibid., 30.

[19] United Nations, "First report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to resolution 1526 (2004) concerning Al-Qaida and the Taliban and associated individuals and entities," (25 August 2004) UN Doc. S/2004/679 (hereafter UN August 2004), 5.

[20] Bantekas, "International Law," 323–324.

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Yet, even after the 1998 embassy bombings, the UNSC first emphasized the duty of states to suppress terrorism, without reframing the problem in terms of nonstate-sponsored terrorism.[21] For example, the 1999 UN Convention for the Suppression of Terrorist Financing highlights state responsibility for the actions of private actors operating within their jurisdiction. UN Security Council Resolution 1269 (1999) was the first to use the term "terrorist financing," but here the Security Council made clear that states harboring, funding, aiding, or failing to adopt measures to suppress terrorism would be held accountable for acts committed by those terrorists it sponsored. Sudan and Libya were effectively persuaded to suppress terrorism through this sanctions approach, in conjunction with the demise of their Cold War sponsors, but Afghanistan's Taliban were not.[22]

In 2000, the Security Council passed resolution 1333 and for the first time took on the nonstate actor al Qaeda through a freeze on the financial assets of Osama bin Laden and those associated with him, as designated on a list maintained by the 1267 Committee.[23] Resolution 1333 reflects the beginnings of the transformation of the state sponsor approach to counterterrorism to a transnational criminal finance approach.

A Piecemeal Anti-Money-laundering Regime

The bulk of the pre-September 11 multilateral cooperation that would be used after September 11 to counter terrorist financing took place in the counter-drug, counter-crime domain. Here, the major Western powers took the lead in developing a soft-law regime to combat transnational criminal finance. The strategic emphasis was on ensuring that states had the domestic capacity to combat organized criminal finance, and later, its new cousin, terrorist finance. Such capacity required enacting and enforcing domestic financial, banking, law enforcement, and anticorruption legislation. The regime developed in a piecemeal fashion.

The creation of the Financial Action Task Force on money laundering in 1989 marked the first in a series of efforts to establish informal inter- and transgovernmental bodies to handle the problem of criminal finance. The Financial Action Task Force sets and promotes best practices (put forward by the United States and the United Kingdom) in combating transnational financial crimes, and monitors the status of countries' legislative and regulatory conformity with these standards.[24] It published a set of forty recommendations in 1990 (revised in 1996), that laid out the basic framework for states to establish comprehensive anti-criminal-finance systems. In 2000, the Financial Action

[21] Ibid., 316.
[22] Oudraat, "United Nations," 31.
[23] UN August 2004, 5.
[24] Author's interview with INL official; and Bantekas, "International Law," 328.

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Task Force began a campaign of "naming and shaming" jurisdictions that did not cooperate in the global effort to combat money laundering, which prompted many of those named to alter their domestic legislation in order to be removed from the list. It further suggested a set of countermeasures that states could take against the recalcitrant countries to prod compliance.[25] A number of regional Financial Action Task Force-style organizations were established between 1999 and 2000.[26]

In 1995, the financial intelligence units of twenty states (led by the United States and Belgium) established an informal transgovernmental network for sharing information concerning money laundering. Dubbed the Egmont Group, it grew rapidly to 58 states by June of 2001 and 101 by 2006.[27] It has served as a useful informal vehicle to improve information sharing, analysis, and training to combat money laundering.[28] The 2000 UN Convention against Transnational Organized Crime required member states to enact comprehensive domestic banking laws and regulations to deter and detect money laundering. This nascent anti-money-laundering regime would form the basis of the newly anointed international counter-terrorist-financing regime after the terrorist attacks on the United States on 11 September 2001.[29]

The progress made in the 1990s in creating formal and informal international rules on terrorism resulted from heightened awareness in the aftermath of major terrorist attacks in 1993 and 1998 against the United States. No overarching transnational security frame united the problem of terrorism and the problem of funds flowing through the international economy to finance them. Slowly and haltingly, the problems of terrorism and terrorist financing were being redefined by the Western powers as falling within a new paradigm of nonstate-sponsored actors. Led by the United States, the Security Council had begun focusing the Council's powers on nonstate actors such as al Qaeda. But other states saw little incentive to engage on an issue that was not seen as their problem, so learning was episodic and of limited duration. The same pattern plays out in the post-September 11 period.

International Efforts after the September 11th Attacks

On 28 September 2001, the UN Security Council passed a U.S.-sponsored resolution that obligated all members of the UN to act to suppress terrorism

[25] *INCSR 2004*, 49–50, and "NCCT Initiative," Financial Action Task Force, 16 July 2005, accessed at http://www1.oecd.org/fatf/NCCT_en.htm, 16 July 2005.

[26] *INCSR 2004*, 52–57.

[27] The Egmont Group, "Financial Intelligence Units of the World," 13 June 2001, accessed at http://www.fatf-gafi.org/pdf/EGFIUlist2001_en.pdf, 5 January 2006; and "Financial Intelligence Units of the World," 29 June 2005, accessed at http://www.fincen.gov/int_egmont.html, 5 September 2006 (hereafter *Egmont FIU List 2001* and *Egmont FIU List 2005*).

[28] Author's interviews with S/CT official and FinCEN official.

[29] *INCSR 2004*, 48; and author's interview with INL official.

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and terrorist financing. Resolution 1373 is in effect a "mini treaty." It requires all of the same changes to domestic legislation, denial of safe haven, and criminalization of terrorism as the 1997 Convention on the Suppression of Terrorist Bombings and the 1999 Convention on the Suppression of Terrorist Financing. But since these treaties were not yet in force on 11 September 2001, the Security Council used its Chapter VII authority in Resolution 1373 to obligate *all* members to implement their provisions. Resolution 1373 goes beyond Resolution 1267 to require states to act against all terrorist organizations and their associates, not merely al Qaeda and the Taliban. This broad language reflects the U.S. determination to take advantage of the sympathetic post-September 11 environment in passing much tougher measures than states would otherwise have accepted.[30] Resolution 1373 established the Counter-Terrorism Committee (CTC) to monitor implementation and increase the capability of UN members to fight terrorism through the promotion and targeting of technical assistance.[31] Unlike the 1267 Committee however, the CTC does not maintain a designated terrorist list (the United Kingdom would not support such a proposal) and it adopted a neutral profile to generate as much responsiveness from UN members as possible.[32]

Problems in Sustaining Collective Action

The international response appears remarkable on its surface: over 100 nations drafted and passed laws addressing money laundering or terrorist financing shortly after September 11. The indicators used to measure the success of international efforts to combat terrorist financing include those most often cited by U.S. governmental officials (such as the amount of national and global asset freezes, establishment of financial intelligence units, conventions signed, treaties ratified and domestic legislation passed, and technical assistance programs run), as well as the International Monetary Fund (IMF) and World Bank measures of compliance.[33] After the attacks of September 11, the number of states ratifying the UN terrorism conventions soared, with 154 ratifying the 1999 Convention on the Suppression of Terrorist Financing and 148 ratifying the 1997 Convention on the Suppression of Terrorist Bombings.[34] Approxi-

[30] Bantekas, "International Law," 326.

[31] UN Office on Drugs and Crime, "Terrorism," accessed at http://www.unodc.org/unodc/en/terrorism.html, 16 July 2005.

[32] Author's interview with IO official; and Oudraat, "United Nations," 33.

[33] The indicator of assets frozen is problematic, because U.S. government reports are unsystematic. The Government Accountability Office harshly criticized the State Department and especially the Treasury Department for this. See "Terrorist Financing: Better Strategic Planning Needed to Coordinate U.S. Efforts to Deliver Counter-Terrorism Financing Training and Technical Assistance Abroad," United States Government Accountability Office Report to Congressional Requesters, October 2005 (hereafter GAO 2005).

[34] "Nuclear Threat Initiative, International Convention for the Suppression of the Financing of Terrorism," accessed at http://www.nti.org/e_research/official_docs/inventory/pdfs/finterr.

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mately $147 million dollars in assets were frozen after the attacks of 11 September 2001 (about $44 million of which were in the United States).[35] Since September 11, approximately 188 countries have legislated the ability to freeze assets associated with al Qaeda and the Taliban, and 170 have passed legislation against terrorist groups more generally.[36]

In October 2001, the Financial Action Task Force expanded its anti-money-laundering mission to include terrorist financing, and it issued nine special recommendations for fighting terrorist financing. The Egmont Group also took terrorist financing under its purview. The widespread acceptance of multilateral norms to prevent terrorist use of the formal financial system led states to seek membership in the Egmont Group and ensure their removal from the Financial Action Task Force Non-Cooperative Countries and Territories list. Since 2000, the Egmont Group has grown by over 40 countries and territories to a total of 102.[37] The IMF and World Bank agreed to provide technical assistance to countries to ensure compliance with the Financial Action Task Force's anti-money-laundering and counter-terrorist-financing recommendations and inclusion of anti-money-laundering considerations in their country evaluations.[38]

Yet the international effort on terrorist financing, while impressive, has largely been superficial. States have taken steps they otherwise would not have taken in passing desired domestic legislation and in ratifying various UN terrorism conventions. The shock of the September 11 terrorist attacks on the United States, combined with Western pressure to adopt the existing pieces of the anti-money-laundering/counter-terrorist-financing regime made the costs of non-adoption higher. However, the only "carrot" offered by Resolution 1373 was technical assistance in combating terrorist financing, and total U.S. spending on technical assistance on this issue since September 11 has not exceeded $30 million.

The United States is not very active in the work of the UN CTC and devotes much more attention to the narrower purview of the 1267 Committee. The United States prefers expanding the al Qaeda and Taliban list of the 1267 Committee to sanction governments, groups, and individuals and using

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pdf#search=%22convention%20terrorism%20financing%20nti%22, 4 October 2006; and "International Convention for the Suppression of Terrorist Bombing," accessed at http://www.nti.org/e_research/official_docs/inventory/pdfs/bomb.pdf#search=%22convention%20terrorist%20bombing%20nti%22, 4 October 2006." See Table 2, United Nations, "Report of the Secretary General to the Commission on Crime Prevention and Criminal Justice, UN Economic and Social Council," (17 March 2004) UN doc. E/CN.15/2004/8, 14 (hereafter UN March 2004).

[35] *9/11 Staff Monograph*, 45; and *INCSR 2004*, Introduction.

[36] UN March 2004, 12; and *9/11 Staff Monograph*, 45.

[37] *Egmont FIU List 2001*; and *Egmont FIU List 2005*.

[38] "Twelve-Month Pilot Project of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments," IMF and the World Bank Joint Report on the Review of the Pilot Project, 10 March 2004 (hereafter IMF-World Bank Joint Report).

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bilateral and regional organizations to monitor and encourage compliance rather than developing a global multilateral regime focusing on technical assistance to build the capacity to implement and enforce laws against terrorist financing.[39] Of the $2.2 million given to the UN to implement technical assistance in counter-terrorist financing, the United States contributed less than 10 percent, while Austria alone made up over half of the contributions.[40] Indeed, it appears that there is disagreement at the political level in the United States over whether working through multilateral fora is anything other than "a waste of time."[41]

The available international "sticks" involve designations and sanctions (under UNSC Resolutions 1373, 1333, and 1267) and international pressure (the Financial Action Task Force's list of Non-Cooperative Countries and Territories). States initially followed the U.S. lead and designated individuals and entities that the United States named under Executive Order 13224. However, because of early U.S. errors in these designations and the widespread perception that they were intended for domestic political consumption, states—including almost all European states—now prefer to follow the UN lead on designations.[42] European citizens were among some of the early designees who were subsequently "de-listed." These mistakes raised concerns in European countries about the evidence involved, while other European countries faced lawsuits from the families of those who were designated. Of the $9 million in new asset freezes in 2004, $8 million were frozen by the United States.[43] Willingness to "name and shame" through the Financial Action Task Force's list of Non-Cooperative Countries and Territories evaporated, and political lobbying meant that as of February 2006, only Myanmar and Nigeria were listed as noncooperative while notorious money-laundering havens such as Nauru were not.[44] Some U.S. officials indicated that the Abu Ghraib scandal and the war in Iraq lessened Middle Eastern countries' interest in working with the U.S.[45]

Implementation of the best practices advocated by the Financial Action Task Force and the minimum standards required by Resolution 1373 has been much less forthcoming. Of forty-one countries surveyed in 2003, the IMF and World Bank found that compliance with the Financial Action Task Force special recommendations on terrorist financing was weakest in lower- and middle-income countries (categories that feature prominently in the list of "countries of concern" for terrorism financing compiled by Western states). The IMF and World Bank also reported that compliance was much less for the

[39] Author's interviews with State Department officials.

[40] See Table 1 in UN March 2004, 7.

[41] Author's interview with S/CT official.

[42] Author's interview with FinCEN official.

[43] Author's interview with OFAC official; and *INCSR 2005*, Introduction.

[44] "NCCT Current List," Financial Action Task Force, 17 February 2006, accessed at http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1_1,00.html, 16 April 2006.

[45] Author's interviews with State Department officials.

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more domestically intrusive and costly recommendations (such as regulating alternative money remittance systems and charities and know-your-customer requirements for wire transfers).[46]

U.S. threats of financial sanctions have produced important changes in state behavior in asset freezing and in complying with the Financial Action Task Force standards in some cases (the Philippines). But in the cases of most concern to the United States, particularly Saudi Arabia, Indonesia, and the Philippines, U.S. officials have suggested that it has only been the domestic experience of terrorism—after al Qaeda "fouled its own nest"—that sparked real action in these states on counter-terrorist financing. Even then, the bulk of cooperation has not been in the area of designations or in bolstering implementation of the counter-terrorist-financing regime, but in capturing and eliminating terrorist financiers.[47]

Problem Definition among the Most Financially Powerful States

The prospects for sustaining international collaboration on counter-terrorist financing and solidifying a global counter-terrorist financing regime are uncertain. Ongoing terrorist attacks present continual reminders of the danger of permitting penetration of national and international financial systems. In the absence of such attacks, U.S. officials have repeatedly stated, foreign governments do not see the institutional structures that facilitate terrorist financing as their problem, and they correspondingly do little to enforce anti-money-laundering and anti-terrorist-financing measures.[48] The major actors who would form any k-group interested in and necessary for sustaining a counter-terrorist-financing regime have different priorities, as the European response suggests.

There is emerging recognition of the problem posed by transnational actors among the European states. However, the European approach differs from that of the United States, suggesting fundamental disagreement on how to define the problem of counterterrorism and counter-terrorist financing. At a basic level, the original EU members are vitally concerned with ensuring that new and old members improve their counterterrorism laws. For them, September 11 and the 2004 Madrid and 2005 London bombings demonstrated that Islamic radicalism was a threat not only to the United States but to Europe as well. Yet internationally, the Europeans emphasize a global multilateral approach to anti-money-laundering/counter-terrorist-financing standard setting and technical assistance to implement such standards, and downplay the utility of designations and asset freezes. In their cooperation with the United States after September 11, the Europeans all took measures to counter terrorist fi-

[46] IMF-World Bank Joint Report, 48.
[47] Author's interviews with S/CT and EB officials.
[48] Author's interviews with FinCEN, S/CT, and IO officials.

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nancing and to improve their compliance with the Financial Action Task Force standards.[49] However, they moved away from support of the U.S. focus on high-profile designations toward an "intelligence-based" approach that emphasized European and G8 information sharing to identify and track terrorist finances as well as greater attention to UN and EU-wide multilateral standard setting and implementation.[50]

While formally supportive of the work of the UN, the United States has chosen to use UN instruments for the narrow purpose of targeting Islamist groups rather than terrorism more broadly. The United States has favored bilateral and regional information sharing and targeted technical assistance over global multilateral efforts.[51] The United States seems to prefer the current patchwork approach of utilizing the multiple international frameworks (IMF/World Bank, the Financial Action Task Force, 1267 Committee) when it suits U.S. interests to pressure particular countries that are sources of Islamic terrorist financing and terrorist activity. The Europeans' interests are broader, seeking to create rule-of-law economies and attack the root causes of terrorism through multilateral best practices and technical assistance. While there is not the fundamental rift in the transatlantic discussion over terrorism financing that exists over U.S. willingness to unilaterally use force in waging its war on terror, the differences between the United States and the Europeans over priorities and domestic costs are significant enough to impede collective action to create a robust counter-terrorist-financing regime.

The fundamental cause of the different approaches appears to be the lack of a common definition of the problem posed by terrorist financing and terrorism more broadly and the uneven and sporadic internalization of a new security paradigm that places nonstate actors and nontraditional concerns closer to the center of the notion of national security. Collective action theory suggests that without a common U.S. and European definition of the problem and a subsequent common interest in underwriting the costs of such a regime, it is likely that these countries will fail to produce the public good of a global financial system that is less penetrable by terrorists. A detailed study of the

[49] Author's interview with EB official; *INCSR 2004*; United States Department of State, *Patterns of Global Terrorism 2003*, March 2004, accessed at http://www.state.gov/documents/organization/31912.pdf, 4 October 2006; Francis T. Miko and Christian Froehlich, "Germany's Role in Fighting Terrorism: Implications for U.S. Policy," CRS Report for Congress, 27 December 2004; and HM Treasury, "Combating the Financing of Terrorism: A Report on UK Action, 24 October 2002," accessed at http://www.hm-treasury.gov.uk/documents/international_issues/terrorist_financing/int_terrorfinance_combatfinance.cfm, 16 July 2005.

[50] "The Fight against Terrorist Financing," Note of the Secretary General/High Representative and the Commission to the Council of the European Union (EU Doc. 16089/04), 14 December 2004, accessed at http://ue.eu.int/uedocs/cmsUpload/EUplan16090.pdf, 4 October 2006; see also "EU Plan of Action on Combating Terrorism—Update," First Review by the Presidency of the European Council, (EU Doc. 16090/04), 14 December 2004, accessed at http://ue.eu.int/uedocs/cmsUpload/16089fight_against_terrorist_financing.pdf, 4 October 2006.

[51] Author's interviews with all State Department officials.

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U.S. case suggests that lack of continuous political attention to the problem and bureaucratic infighting prevent the United States from redefining the problem of terrorist financing.

U.S. Effort to Combat Terrorist Financing before 11 September 2001

Prior to the 2001 attacks, there was no sustained, concerted effort by the United States to counter terrorist financing. *The 9/11 Commission Report* and *The 9/11 Commission Staff Monograph on Terrorist Financing* paint an authoritative picture of disaggregated data collection, mistaken understandings regarding information sharing, conflicting organizational cultures and jealousies, and interrupted attention spans that impeded the government and Congress in focusing on the issue of terrorism and how it was funded. The only governmental body focused on the issue more or less consistently was the White House, particularly the National Security Council (NSC), which since 1985 has coordinated government efforts to counter terrorism.[52]

Terrorism was one of the first national security issues the new Clinton administration had to face, with the assassination of two Central Intelligence Agency (CIA) employees outside CIA headquarters in Virginia in January 1993 and the bombing of the World Trade Center the following month. The issues of terrorism and terrorist financing occupied the NSC from the aftermath of the 1993 World Trade Center bombing onward. Detection and prevention of weapons of mass destruction terrorism were made the very highest priority for President Clinton's own staff and all agencies; a reorganization gave the Department of Justice and the FBI the lead on the domestic front, with the CIA, the State Department, and others responsible for the foreign front.[53]

Although the issues of terrorism and terrorist financing received a high level of attention from the President and his national security advisors, the NSC was incapable of systematically engaging and directing a host of subunits within various government agencies to address the problems.[54] Because of the attorney general's concerns and the legacy of the Iran-Contra affair during the Reagan administration, the NSC Counterterrorism Security Group Director Richard Clarke was authorized only to give advice regarding budgets and to coordinate interagency guidelines for action.[55] The NSC therefore could not task agencies

[52] *The 9/11 Commission Report. Final Report of the National Commission on Terrorist Attacks Upon the United States,* authorized ed. (New York: W.W. Norton & Company, 2004), 98–100, 122–123, 185.

[53] Ibid., 100–102.

[54] *9/11 Staff Monograph*, 4–5; and author's interviews with OFAC, FinCEN, and INL officials.

[55] *9/11 Commission Report*, 101; and Congressional Research Service, "Terrorist Financing: Current Efforts and Policy Issues for Congress," CRS Report for Congress, 20 August 2004, 9–10 (hereafter CRS August 2004), and "Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination," CRS Report for Congress, 3 August 2005, 14 (hereafter CRS August 2005).

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to take action and appropriate funds, which one senior official suggested was the fundamental problem preventing successful interagency coordination and action.[56]

Knowledge of how terrorists financed their operations was poorly sourced and slow in coming.[57] As late as 1997, the CIA was aware that Osama bin Laden had provided funds to several terrorist organizations but not that he was at the heart of a terrorist network. Because the national security advisor had expressed a personal interest in terrorist financing, the CIA had set up a unit to track terrorist financial links in 1996. It focused solely on bin Laden, however, and moved quickly away from a focus on financial links to one on operational planning.[58]

The issue of terrorist financing gained more attention after the bombings of the U.S. embassies in Nairobi and Dar es Salaam in early August of 1998. An NSC-led interagency group on terrorist financing was established, which included the NSC, the Treasury Department, the CIA, the FBI, and the State Department. While the CIA cooperated in this group, the FBI would not meaningfully participate.[59] The NSC alone maintained pressure on the issue of terrorist financing. It led in pressing the Saudis for access to a key al Qaeda financial officer.[60] The President and the State Department, again after NSC urging, began to pressure Pakistan on its support to jihadists in Kashmir and the Taliban. The President issued Executive Order 13099, freezing all financial holdings that could be associated with bin Laden.[61]

Despite the increased focus on counter-terrorist financing from the White House, there was little change in the behavior of federal agencies. The FBI was gathering intelligence against organizations suspected of raising funds for terrorists on a field office level, but with no centralized collection or sharing system in place.[62] At NSC urging, the Treasury Department was designated in March 2000 as the home for a new Foreign Terrorist Asset Tracking Center (FTATC) and congressional authorization came in October. However, due to bureaucratic tug-of-wars between Treasury and the CIA, the FTATC was only hastily staffed three days *after* September 11.[63]

Financial Industry Objections and U.S. Capacity for Collective Action

Despite the lack of coordinated effort in the executive branch, prior to September 11 there was a somewhat ad hoc system of laws, authorities, and regulations in place that directly or indirectly addressed terrorist finances.

[56] Author's interview with James B. Steinberg, Deputy National Security Advisor to the Clinton administration, Washington DC, 14 October 2004.

[57] *9/11 Commission Report*, 170–171; and *9/11 Staff Monograph*, 34–35.

[58] *9/11 Commission Report*, 109.

[59] *9/11 Staff Monograph*, 40–41.

[60] *9/11 Commission Report*, 122.

[61] E.O. 13099, 20 August 1999, cited in Ibid., 126.

[62] *9/11 Commission Staff Monograph*, 4–6.

[63] *CRS August 2005*, 11–12.

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These rules both criminalized the provision of funds to terrorists and provided the government the means to collect information with which to detect the flow of such funds. The 1990 Anti-Terrorism Act made material support, including funding and financial services, to foreign terrorist organizations illegal. In 1995, the Clinton administration pushed for increased federal criminal laws, making it easier to deport terrorists and to act against terrorist fund-raisers. After the Aum Shinrikyo chemical weapons attack on the Tokyo subway and the Oklahoma City bombing in 1995, Clinton proposed increased wiretap and electronic surveillance authority for the FBI and new funding for the FBI, CIA, and local police.[64] The 1996 Anti-Terrorism and Effective Death Penalty Act made the provision of support to terrorists a criminal act, and allowed civil suits against a foreign state or its instruments committing a terrorist act.[65] A series of anti-money-laundering statutes made conducting financial transactions to further or conceal criminal acts—including the destruction of aircraft and hostage taking, among many others—illegal.[66]

Despite these advances in counter-terrorist-financing legislation, the financial industry blocked most other efforts in the 1990s to strengthen the anti-money-laundering regime. A critical element of the anti-money-laundering legal framework was the 1970 Bank Secrecy Act. It required banks to create audit trails of large bank transactions and to allow law enforcement access to such information or face criminal penalties. In 1985, the Federal Reserve and the Office of the Comptroller of the Currency began requiring financial institutions to submit suspicious activity reports. The Annunzio-Wylie Anti-Money Laundering Act of 1992 added Treasury to the list of executive agencies able to require this information and required for the first time that banks keep records of wire transfers.[67] The decision on what activity was "suspicious" fell to the discretion of bank employees. The Treasury Department lobbied for controls on foreign banks with U.S. accounts in 1999 and 2000. Despite bipartisan support in the House, this effort stalled in the Senate Banking Committee, where the chair rejected further regulation of banks.

In 1999, the Treasury Department and federal financial regulators proposed draft regulations requiring banks to "know your customer." These requirements would ensure that banks took reasonable steps to know who the beneficial owner of an account was and the sources of funds flowing through accounts. This sparked such a firestorm of controversy and resistance from the banking industry that these efforts failed and Congress even considered weak-

[64] *9/11 Commission Report*, 100–101.

[65] Bantekas, "International Law," 328.

[66] Mariano-Florentino Cuellar, "The Tenuous Relationship between the Fight against Money Laundering and the Disruption of Criminal Finance" (Stanford Public Law and Legal Theory Working Paper Series, research paper no. 64, September 2003): 337–338.

[67] Ibid., 358. The Federal Reserve and Office of the Comptroller of the Currency had been requiring SARs since 1985.

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ening the money-laundering controls then in place.[68] The banking industry successfully defeated Treasury's initial attempts to specify exactly what information must be collected on wire transfers. This essentially prevented the creation of standardized records, significantly impairing the efficiency and speed with which law enforcement could access such information.[69]

Additional efforts to regulate the informal financial system (for example, money remitters and other money services businesses) were also thwarted. The informal system was increasingly important as money launderers and terrorists shifted their operations outside the formal financial system. Although Congress had authorized Treasury in 1994 to draw up regulations governing the informal sector, these regulations were only issued in 1999, with an implementation date of December 2001. In the summer of 2001, the Treasury Department deferred implementation to 2002.[70]

The most powerful legal tool in the counter-terrorist-financing tool kit prior to September 11 was the 1977 International Emergency Economic Powers Act (IEEPA). Under the IEEPA, if the president declares a national emergency with regard to an "unusual or extraordinary" foreign threat, he can block, through a presidential decision directive, the assets of individuals or organizations associated with that threat, and trade between the United States and those designated. The Office of Foreign Assets Control in the Department of the Treasury then identifies the designated individuals or entities and orders their bank accounts frozen. U.S. courts have given the president wide latitude in using this authority because it relates to foreign policy and national security and is therefore a political rather than legal issue.[71] The United States has long used this tool to freeze the assets of states sponsoring terrorism, such as Iran, Libya, and Sudan.

According to the 9/11 Commission staff, "In the 1990s the government began to use these powers in a different, more innovative way, to go after nonstate actors."[72] In 1995, President Clinton used his authority under the IEEPA to issue an executive order freezing the U.S. assets of Colombian drug trafficking organizations and barring U.S. businesses from dealing with the traffickers or their front companies. The same year, the Clinton administration used the IEEPA to sanction terrorists seeking to disrupt the Middle East peace process. Treasury's Office of Foreign Assets Control had hoped to target bin Laden in this way, but did not have access to the intelligence required to make the case for designating him. This would wait until after the 1998 embassy bombings, when President Clinton formally designated bin Laden and al Qaeda under the IEEPA. This had little practical effect, because bin Laden had

[68] *9/11 Staff Monograph*, 38.
[69] Cuellar, "Tenuous Relationship," 359–360.
[70] *9/11 Staff Monograph*, 38–39.
[71] Cuellar, "Tenuous Relationship," 360–361.
[72] *9/11 Staff Monograph*, 37.

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moved most of his assets out of the formal financial system after he left Sudan in 1996 and the IEEPA only gave Treasury's Office of Foreign Assets Control authority over assets in U.S. banks and over other U.S. legal persons. In 1999, the President designated the Taliban under the IEEPA for harboring bin Laden and al Qaeda, and blocked Taliban assets worth over $34 million held in private U.S. banks and $217 million in gold and deposits held at the Federal Reserve.[73]

U.S. Inability to Redefine the Collective Interest prior to September 11

The picture of U.S. efforts to suppress terrorist financing prior to the 11 September 2001 attacks is one of fractured attention spans and lack of a comprehensive approach to the multifaceted problem of terrorist finance. During the 1990s, the Clinton administration began to slowly redefine the threat of terrorism as one separate from the traditional paradigm of state sponsors against which economic and military sanctions could be applied. But the redefinition was taking place at the NSC, and its expansion to higher levels of the government and Congress waxed and waned in sequence with the terrorist attacks against the United States in 1993, 1995, 1998, and 2000. The U.S. counterterrorism effort was fragmented among many different agencies and lacked any central coordination and direction, particularly at the FBI.[74]

The U.S. Congress had not made the shift in paradigms to a new post-Cold War, nonstate actor framing of national security. The Congress, in addition to resisting the executive branch's efforts to reframe anti-money-laundering measures as national security measures, remained enamored of economic sanctions against out-of-favor states. This hindered the U.S. ability to work with critical states such as Pakistan on suppressing al Qaeda and pressuring the Taliban.[75] Domestic ideological and political battles often interfered with serious attention to the issue of transnational terrorism, and lessened the sense of threat that nonstate actors posed to the United States. Congress only focused on nonstate terrorism in a completely reactive fashion, in the wake of attacks on U.S. targets at home and abroad. Even this attention was minimal and not sustained. According to the 9/11 Commission, "Terrorism was a second- or third-order priority within the committees of Congress responsible for national security."[76]

By the end of the Clinton presidency, nonstate terrorists and their finances were recognized in the executive branch as a serious threat to U.S. national security.[77] The White House, however, was incapable of translating this recognition into a coordinated and effective domestic and international counterterrorist

[73] Ibid., 37–38.
[74] Ibid., 4–6.
[75] *9/11 Commission Report*, 102–107.
[76] Ibid., 107, 118–119.
[77] Ibid., 100–102; author's interviews with Steinberg and Myers.

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effort. Ironically, the government's success in finding and prosecuting the 1993 World Trade Center terrorists impeded White House efforts to reframe and prioritize terrorism and terrorist financing as a major threat.[78]

The U.S. Effort to Combat Terrorist Financing after September 11

The new administration of George W. Bush did not begin its term with the understanding of nonstate threats that the Clinton administration had learned, and its foreign policy priorities, such as missile defenses, were driven by the familiar paradigm of states as the most serious threats facing the United States.[79]

The shock of the 11 September 2001 attacks caused radical changes in the way the U.S. federal government framed and managed the issue of terrorist financing. Within days, federal bureaucracies came together to act collectively to understand the financial basis of the attacks. Agencies immediately established new units to work on the problem, and agreed to interagency cooperation.

The FBI, which was harshly criticized in the 9/11 Commission Staff Monograph for its failures prior to September 11, established an interagency Financial Review Group within days of the attacks. This group became the Terrorist Financing Operations Section. It focused on ensuring that the United States developed a real-time financial tracking capability for urgent financial investigations and that each terrorism investigation had a financial component. Most importantly, for the first time, it coordinated in a single office the FBI's counter-terrorist-financing efforts.[80] Other agencies followed suit. The United States Customs Service established Operation Green Quest to investigate terrorist financing. The Justice Department reallocated resources from other areas after September 11 to create a unit devoted to conducting and coordinating terrorist-financing criminal investigations nationwide.[81] Within a week of the September 11 attacks, the CIA had created a new interagency section to develop long-term intelligence on terrorist financing, track terrorists, and disrupt their operations. In 2003, the FBI-led Joint Terrorism Task Force combined the investigative efforts of the FBI, the Justice Department, Customs (now under the Department of Homeland Security), and the IRS.

The NSC set up an ad hoc structure immediately after the attacks, which was replaced by a Policy Coordinating Committee on Terrorist Financing in March 2002.[82] The Policy Coordinating Committee was chaired by the Treasury Department Office of Legal Counsel until November 2003 and, owing largely to General Counsel David Aufhauser's personality, was able to overcome interagency dif-

[78] *9/11 Commission Report*, 73.

[79] Author's interview with Steinberg.

[80] *9/11 Staff Monograph*, 41–42.

[81] This became the Terrorism Financing Unit under the Department of Justice Counterterrorism Section. Ibid., 42.

[82] Ibid., 47.

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ferences.[83] The Treasury Department's lead role in counter-terrorist financing came under fire from the Independent Task Force on Terrorist Financing at the Council on Foreign Relations, which insisted that the NSC take the lead on the PCC because of the diplomatic and intelligence aspects of counter-terrorist financing.[84] The 9/11 Commission staff also reported that the PCC was not well integrated into the broader U.S. counterterrorism effort, a criticism loudly echoed by the Council on Foreign Relations Independent Task Force.[85] A Government Accountability Office study suggested that the lack of integration continued through 2005.[86]

Bureaucratic Politics and Collective Action

Even well-endowed and motivated states such as the United States that have legal authorities in place and have recently suffered terrorists attacks find it difficult to develop the capacity to implement collective action domestically. Domestically, capacity requires interagency cooperation to produce effective counterterrorism strategies and implement them. However, domestic agencies, even after attacks as profound as those on 11 September 2001, are likely to pursue their bureaucratic interests at the expense of the collective effort against terrorist financing. Initially, government officials report, interagency cooperation was unprecedented. Yet domestically, cooperation was not well-institutionalized and bureaucratic politics undermined its effectiveness.[87]

A number of bureaucratic battles developed in the aftermath of the September 11th attacks that interfered with the implementation of domestic collective action against terrorist financing. The Treasury Department was at the center of most of them, as it sought to take the lead both domestically and internationally on designations of terrorist financiers and technical assistance training. Within the Treasury Department, the Office of Foreign Assets Control was hastily made the home of the FTATC (authorized and funded in fall 2000, but only established three days after the September attacks). The FTATC never fully functioned at Treasury. The CIA essentially took over the operation, a fact made official by November 2002, when it was renamed the Foreign Terrorist Asset Tracking Group and made an independent CIA-administered entity. After its move to the CIA, neither the Treasury Department nor the Financial Crimes Enforcement Center (FinCEN) detailed any analysts to the Tracking Group. The Tracking Group functioned as a targeting arm of the Policy Coordinating Com-

[83] Ibid.; author's interviews with Myers and INL and FinCEN officials.

[84] "Terrorist Financing," report of an independent task force sponsored by the Council on Foreign Relations, November 2002, 23 (hereafter 2002 CFR Report), and "Update on the Global Campaign Against Terrorist Financing," report of an independent task force sponsored by the Council on Foreign Relations, 15 June 2004, 31 (hereafter 2004 CFR Report).

[85] *9/11 Staff Monograph*, 47; 2002 and 2004 CFR Reports.

[86] GAO 2005, 31.

[87] Author's interviews with Myers and FinCEN, OFAC, INL, and EB officials.

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mittee on Terrorist Financing. However, this committee was given a low priority within the administration; it was left leaderless for months, and funds that were to be used for it were reallocated to build a protective barrier around the Treasury Department in 2005.[88]

Another bureaucratic battle took place between the U.S. Customs Service and the FBI Terrorist Financing Operations Section over Customs Service's Operation Green Quest. Both led overlapping interagency groups to investigate terrorist financing. This dispute was resolved in 2003 with the formation of an FBI-led Joint Terrorism Task Force, but with an agreement to ensure the continued participation of experts at Customs (now the Immigration and Customs Enforcement branch of the Department of Homeland Security).[89]

A third bureaucratic battle developed over which agency should lead in the international effort to implement counter-terrorist-financing measures through technical assistance. After September 11, an interagency Terrorist Financing Working Group was established. Co-chaired by the State Department's Office of the Coordinator for Counter Terrorism and Bureau for International Narcotics and Law Enforcement Affairs, it reported to the NSC Policy Coordinating Committee on Terrorist Financing. The Terrorist Financing Working Group identified and assisted important countries in making their financial systems less vulnerable to manipulation by terrorists. It provided technical assistance and training programs to establish and implement legal and regulatory frameworks to comply with UN Resolution 1373, create financial intelligence and financial crimes units, and prosecute terrorism finance crimes. The Treasury Department's Office of Technical Assistance worked with Congress to secure $2.2 million for counterterrorism financing training independent of the Working Group and did not cooperate in it. The Treasury Department sought to take the lead in the Policy Coordinating Committee on Terrorist Financing away from the NSC. It also sought to displace the State Department lead in the Terrorist Financing Working Group on intelligence and operations, and in the production of a counter-terrorist-financing strategy report (the annual State Department *International Narcotics Control Strategy Report* covers terrorist financing). The State Department resisted this.[90] Officials at the State Department, FinCEN, and Treasury's Office of Foreign Assets Control suggested that cooperation on counter-terrorist financing was eroding in the area of international technical assistance because of interagency problems, particularly with Treasury's Office of Technical Assistance, and a number of personalities. A FinCEN official called

[88] CRS August 2004, 10–12; and letter from Joshua Bolten, Director of the Office of Management and Budget, to the President, 8 June 2005.

[89] *9/11 Staff Monograph*, 44; and CRS August 2004, 27, 37.

[90] Author's interviews with FinCEN, S/CT, EB, INL, and OFAC officials. This battle has subsequently become public. See GAO 2005, 14–15; and *Terrorist Financing: Agencies Can Improve Efforts to Deliver Counter-Terrorism-Financing Training and Technical Assistance Abroad*, Committee on Financial Services, Subcommittee on Oversight Investigations, U.S. House of Representatives (testimony of David M. Walker, 6 April 2006), United States Government Accountability Office, GAO-06-632T, 1–30.

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the Terrorist Financing Working Group "dysfunctional." While high-level Treasury officials continue to stress the designations and freeze process as a key tool in the counter-terrorist-financing fight, working-level officials at the State Department and FinCEN emphasize that designations are largely ineffectual because the funds move into alternative financial systems. As one State Department official said, "Any objective to block funds is a fool's chase."[91] Instead, the working-level officials stress the domestic and international need to extend anti-money-laundering measures to these systems in order to use intelligence gathered from anti-money-laundering measures to track and disrupt terrorist activities.

U.S. Inability to Redefine the Collective Interest

Underlying these battles is a fundamental debate over which of two strategies is most appropriate and effective in suppressing terrorist financing. The first strategy focuses on designating and detaining terrorists and their associates, freezing their assets, and passing the necessary legislation to make such designations and freezes legal. The second "follow-the-money" or intelligence strategy, focuses on improving regulation of formal and informal financial systems, and intelligence collection, analysis, and sharing to track and disrupt terrorist operations. The debate reflects disagreement over how the United States should define its collective interest regarding terrorist financing.

One would expect from a bureaucratic politics model that different government actors would express distinct preferences regarding these strategies.[92] The agencies with financial regulatory, anti-money-laundering, and law enforcement authorities, such as the Departments of Treasury and Justice, as well as those feeling the greatest pressure to demonstrate that actions were being taken after September 11 to combat terrorism (such as the White House), would prefer the designations-and-asset-freezing strategy. Designations are highly public and visible, with those suspected of financing terrorists rounded up in sweeps as the designations are unsealed. The freezing of assets is easily quantifiable (while the number of total terrorist assets is not widely known), providing a rapid and easily communicated measure of the government's success in vigorously suppressing terrorism. Such actions demonstrate to those who hold budgetary purse strings and to the electorate that concrete efforts and results have occurred. Prosecutorial and investigative agencies and civil liberties advocates should also prefer the designations-and-asset-freezing approach, as long as proper evidentiary standards are used.

In contrast, the intelligence strategy is preferred by the intelligence community, including that within the FBI and FinCEN, because it offers greater potential for terrorists to be tracked and killed or captured, as well as providing

[91] Author's interview with EB official.

[92] David Welch, "The Organizational Process and Bureaucratic Politics Paradigms: Retrospect and Prospect," *International Security* (Fall 1992): 112–146.

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the data necessary for building profiles of terrorists. For the foreign affairs agencies, the private or covert nature of the intelligence strategy increases the government's flexibility in cooperating with foreign countries, inasmuch as secret assistance may be more forthcoming than public. Members of the financial services industry should favor the intelligence strategy, because it reduces the likelihood of tighter government regulation of their activities or, at a minimum, provides less publicity regarding their cooperation with government authorities regarding client information. The post-September 11 experience, while remarkably cooperative by all accounts, tends to broadly support such expectations.[93]

The strategies are not mutually exclusive, but unthinking or compartmented reliance on one can seriously impede the effectiveness of the other. Resources are not infinite. The bureaucratic interests engaged in each strategy create a tendency to withhold information and guard bureaucratic prerogatives. Such tendencies were dramatically exposed in the 9/11 Commission's report on the bureaucratic compartmentalization and turf battles that existed prior to September 11 and that, in the Commission's estimation, represent massive failures to successfully detect and prevent terrorist attacks.[94]

Lack of Common Definition of the Problem of Terrorist Financing

During the first G.W. Bush administration, the designations-and-asset-freezing approach to combating terrorist financing dominated, although both strategies were pursued.[95] As the bureaucratic model would suggest, under his IEEPA authority, President Bush issued Executive Order 13224 designating bin Laden and al Qaeda and authorizing the freezing of assets of entities associated with them, calling it the "first strike in the war on terror." This order ratified Treasury's Office of Foreign Assets Control authority (which had been derived from Clinton-era executive orders) to go after bin Laden's and al Qaeda's assets. In October 2001, President Bush signed the USA Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act into law. It significantly expanded the government's regulatory authority regarding money laundering and criminal finance. It put into effect the "know-your-customer" and wire transfer requirements that had been defeated by the banking industry in 2000.[96] Most of this power goes to the Department of the Treasury to designate countries or business sectors as failing to meet minimum anti-money-laundering standards and, in consultation with other agencies, to impose sanctions and other "special measures" such as restricting countries' or financial institutions' access to the

[93] *9/11 Commission Report*, ch. 3; and *9/11 Staff Monograph*, 4–6.
[94] Ibid.
[95] *9/11 Staff Monograph*, 79; and author's interviews with Myers, and IO, and EB officials.
[96] Author's interview with EB official.

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U.S. financial system.[97] The USA PATRIOT Act also empowered a single government official, the Director of the Office of Foreign Assets Control at the Treasury Department, to freeze assets before legally sufficient evidence had been collected.[98] Treasury's Office of Foreign Assets Control worked feverishly after the attacks to add organizations and individuals to the designations list, using names provided by the CIA, whose intelligence was very poor.[99] Very high level and public announcements of the freezing of terrorist assets occurred soon after the September 11th attacks. As the 9/11 Report put it:

> The goal set at the policy levels of the White House and Treasury was to conduct a public and aggressive series of designations to show the world community and our allies that we were serious about pursuing the financial targets. It entailed a major designation every four weeks. ... Treasury officials acknowledged that the evidentiary foundations for the early designations were quite weak. ... The rush to designate came primarily from the NSC.[100]

The White House, the secretary of the treasury, and the attorney general all trumpeted these actions. However, the intelligence supporting some of the highest-profile designations was found to be seriously flawed from a legal perspective and the volume of money disrupted significantly overstated. In August 2002, the United States was forced into the embarrassing position of de-listing some foreigners under pressure from allies and U.S. citizens who filed lawsuits. The United States was also unable to obtain a conviction on a terrorism charge for a leader of an Illinois charity.[101] The CIA reasoned that designations would have little effect on terrorists, who would simply move funds to nondesignated institutions. It reportedly successfully pressed for more attention to the "follow-the-money" strategy.[102] One State Department official described the initial post-September 11 designations as a political process driven by "the need for public action and the availability of a hammer."[103]

The debate over strategies in turn depends on how closely one identifies the problem of terrorist financing with that of state responsibility and control. The powers granted to regulators and the Treasury under the PATRIOT Act are anti-money-laundering tools, designed for tracking large sums of money. But the sums transferred by terrorists to fund their operations and fund-raisers for terrorist entities are tiny when placed in the context of a multi-trillion-dollar global finance system.[104] The Treasury Department under Clinton

[97] Cuellar, "Tenuous Relationship," 361–362; and 2002 CFR Report, 13, 26.

[98] *9/11 Staff Monograph*, 99.

[99] Author's interview with FinCEN official.

[100] *9/11 Staff Monograph*, 79.

[101] Ibid., 80–81, 85–86 and Illinois charities case study.

[102] Eric Lichtblau and James Risen, "Bank Data is Sifted by U.S. in Secret to Block Terror," *The New York Times*, 23 June 2006.

[103] Author's interview with EB official.

[104] Author's interview with FinCEN, OFAC, and INL officials.

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had already learned this when it sought freeze bin Laden's assets. Unable to gain sufficient information on these assets—in large measure because the fundraising for al Qaeda was dispersed and commingled with legitimate humanitarian donations—Treasury sought but failed to get anti-money-laundering tools from Congress more appropriate to finding terrorist finances.[105]

After early missteps in pursuing the designations strategy, the Bush administration began emphasizing the intelligence strategy.[106] In June 2006, *The New York Times* reported that secret monitoring of the SWIFT financial database—the central hub for global banking transactions—led to the arrest of the alleged mastermind of the 2002 Bali nightclub bombings.[107] Designations and the number of asset freezes declined.[108]

The change in emphasis suggests that some in the Bush administration may have started to reach conclusions similar to the Clinton administration's regarding a state's capacity to control nonstate terrorists. Rather than an emphasis on state power and responsibility to shut down terrorists' access to finances, a gradual understanding of the need for comprehensive financial regulation and information sharing to manage nontraditional national security threats emerged under the Clinton administration. Such a learning process may have begun in the Bush administration, at least in the area of counter-terrorism financing. However, the continued lack of a comprehensive counter-terrorist-financing policy, the unwillingness to allocate specific funds for counter-terrorist financing, and the dominance of the state-centric paradigm among key administration officials suggest that such a redefinition has not been internalized at either the highest or working levels of the U.S. government.[109]

Conclusion

What does the United States effort to counter terrorist financing augur for the global effort? By all accounts, the horror of the September 11 attacks galvanized government bureaucracies and broke down interagency walls that had withstood lesser terrorist attacks.[110] Interagency cooperation and banking industry collaboration with the government was unprecedented in the immediate aftermath of the attacks. This cooperation remains a marked improvement over the pre-September 11 situation. Working-level officials repeat that "we're not going to be the reason 9/11 happens again." It is this sentiment that makes them willing to make the interagency process work. Yet there are strong indicators that the passage of time has eroded the political will to put the national

[105] *9/11 Staff Monograph*, 37.
[106] Ibid., 48–49.
[107] Lichtblau and Risen, "Bank Data."
[108] Author's interview with EB, INL, IO, and OFAC officials.
[109] GAO 2005, 19; and author's interview with Steinberg.
[110] *9/11 Staff Monograph*, 48–49.

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interest ahead of private and bureaucratic interests. As one official handling counter-terrorist financing said, bureaucratic "rivalries have reemerged with greater fervor."[111]

Working-level officials worry that the issue of counter-terrorist financing has slipped in the hierarchy of priorities at higher levels of government.[112] This concern is echoed in high-profile criticism from outside of government.[113] The U.S. effort to counter terrorist financing is being funded largely through reallocations from other budget lines rather than by generating a significant new budgetary commitment.[114] Banks are reportedly experiencing "blocking fatigue." The international community is willing to act only under UN designations, and U.S. actions in Iraq have made some states reluctant to follow the U.S. lead in implementing and enforcing legislative changes. U.S. willingness to underwrite the technical assistance to enable states to enforce the counter-terrorist-financing regime at home has been minimal ($20-30 million since 2001) in comparison with the broader U.S. war on terrorism.[115]

The United States and its European allies have succeeded in globalizing the anti-money-laundering framework and recasting it as a regime to combat terrorist financing. However, the U.S. domestic approach to the problem of terrorist financing has changed in the short period since 2001, and its international efforts reflect this shift. As the U.S. effort shifted away from designations and asset freezes, its international efforts turned more to sharing intelligence with other states to track, capture, or kill important terrorist finance figures.[116] Its efforts have focused bilateral pressure on a small number of countries rather than underwriting a global multilateral regime. While there has been substantial and important movement through informal international bodies such as the Financial Action Task Force and the Egmont Group, the United States has been unwilling to underwrite a formal global counter-terrorist-financing regime.

Fundamentally, the United States has devoted the majority of its attention internationally to the "global war on terror," which it defines to include the war in Iraq. U.S. efforts internationally on terrorist financing illustrate that this war is not really global for the United States, but focused on about twenty-five states in which al Qaeda and other Islamic terrorists operate. Despite the fact that the number of "states of concern" to the United States has grown from nineteen to twenty-six in less than a year, the United States has focused the bulk of its counter-terrorist-financing efforts on tactically targeting groups and

[111] Author's interviews with all State Department, OFAC, and FinCEN officials; quotations are from FinCEN official.

[112] Author's interviews with EB, INL, IO, and FinCEN officials.

[113] See 2002 and 2004 CRF Reports and 9/11 Public Discourse Project Final Report.

[114] Author's interviews with all those interviewed. See also GAO 2005, 19–20; and Walker, *Terrorist Financing*, 1–30.

[115] Author's interview with INL official.

[116] *9/11 Staff Monograph*, 46–47.

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individuals, rather than on building a robust international regime.[117] The problem with such an approach is that terrorist and other criminal finances will flow to wherever the regulatory environment is loosest, so a partial approach is likely to be ineffective. A truly global counter-terrorist-financing regime could change the operating environment of terrorists, forcing them into criminal activity that is easier to trace and prosecute than is "pre-criminal" terrorist financing. The development of a global counter-terrorist-financing regime that would change the operating environment for terrorist financiers does not appear to have genuine support from one of the critical actors needed to promote and underwrite it.

The prospects for the successful global development of national institutional capacity to combat the counter-terrorist-financing framework depends on states' recognition that terrorist financing is their problem, not someone else's. The developed countries, with the most domestic capacity to combat terrorist financing, recognize this threat. Even they, however, have been inconsistent in their willingness to enforce counter-terrorist-financing laws and engage in international cooperation. Less-developed countries without this capacity often do not even see the threat. Redefining the national interest to include countering terrorist financing unfortunately appears to rise and fall with states' experience of terrorist attacks.[118] Without such attacks, and without Western pressure and incentives, it is unlikely that a permanent redefinition of national security to include the financing of terrorism will occur or that states will take the steps to build and enforce an effective global counter-terrorist-financing regime.*

[117] Author's interviews with S/CT official; GAO 2005, 12; and *INCSR 2005*, Introduction.

[118] Author's interviews with all State Department officials.

* The views expressed in this document do not represent the official position of the Department of Defense or the U.S. government, but are the sole responsibility of the author.

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The Politics of Russia's Elusive Defense Reform

ZOLTAN BARANY

Not since June 1941 has the Russian military stood as perilously close to ruin as it does now.

—Alexei Arbatov, 1998[1]

The period of radical reform is finished.

—Vladimir Putin, 2003[2]

Taking the quotes above at face value, one might assume that during the five years that elapsed between them, the Russian military establishment had been comprehensively rebuilt. In contrast to President Vladimir Putin's proclamation, however, his country's armed forces have yet to weather the sort of transformative reform necessary to bring them in line with post-Cold War economic, geopolitical, and security realities. Three months after the President's announcement, his Defense Minister (DM), Sergey Ivanov, publicly conceded that although the military's "reform" had been completed, a period of "regimentation" was just beginning. He depicted the coming era as "more radical reforming of the army" to include improving command structures, modernizing weapons and equipment, and preparing new regulations.[3] Putin himself admitted at a July 2005 Security Council session that those responsible have "not yet managed to implement the agreed[-upon] military reform programs."[4]

[1] Alexei Arbatov, "Military Reform in Russia," *International Security* 22 (Spring 1998): 83.

[2] Vladimir Putin, in a speech at the Ministry of Defense, 2 October 2003. Radio Free Europe/Radio Liberty Newsline Part I (henceforth RFE/RL), 3 October 2003, 7.

[3] "Russian Army: Reform Has Finished, Reforming Has Started," 19 January 2004, accessed at http://www.english.pravda.ru, 25 August 2005.

[4] Cited by Viktor Litovkin in "Demands for Military Reform," RIA Novosti (Moscow), 12 July 2005.

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In fact, the armed forces require massive changes if they are to fit into President Putin's vision of a Russia restored to great-power status. Fifteen years after the fall of the Soviet Union, the Russian military remains impoverished, demoralized, and largely ineffective, despite substantially boosted budgetary allocations since 2001. Cold War–era mentality, top-heavy rank structure, poor training, and outdated equipment still plague Russia's forces. Moreover, the chances of radical change in the Russian military establishment in the near term (say, in the next five to ten years) are slim, because several formidable obstacles—from inadequate budgets to a plethora of social problems—continue to impede substantive reform.

The greatest barrier to meaningful defense reform, however, has been political, not economic or social. Despite constant rhetoric about military reform over the past fifteen years, the Kremlin has been unable or unwilling to force generals to bring the defense establishment in line with the profound changes in Russia's domestic and international circumstances. Therein lies an intriguing puzzle: even though the Russian executive's power has increased sharply since 1991 and even though the Kremlin has ostensibly wanted comprehensive defense reform, little has been done. This outcome would seem all the more unexpected because the Russian/Soviet military—whose cooperation, of course, is indispensable for the implementation of President Putin's reform agenda—has traditionally been a loyal servant of its civilian masters. How are we to account for this puzzle? I argue that a number of contributions to civil–military relations theory, together with an understanding of the profound shifts in the dynamics of late-Soviet and Russian civil–military relations, provide a satisfactory explanation.

I begin by examining some contributions to civil–military relations theory and recent empirical studies that help us understand Russian military politics and the reasons why substantive defense reform has not taken place. I proceed by taking stock of the progress Russia *has* made in transforming its armed forces since 1992 and then briefly outline the present state of the military and evaluate the reform proposals generated by political parties and the Ministry of Defense (MOD). In the last section, I explain the absence of substantive reform, focusing on three factors: the role of the president, the opposition of the armed forces leadership, and lapses in the civilian control of the military.

Civil–Military Relations and the Late-Soviet Past

The field of civil–military relations has provided many valuable normative guides and empirical analyses but has not produced an overarching theory that enables us to understand divergent cases and patterns.[5] There is a substantial

[5] Timothy Colton, "Perspectives on Civil-Military Relations in the Soviet Union" in Timothy Colton and Thane Gustafson, eds., *Soldiers and the Soviet State* (Princeton, NJ: Princeton University

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theoretical literature on the timing, strategy, planning, and execution of coups, for instance, and on the conditions that motivate military personnel to overthrow their governments.[6] "Military influence," the range of institutional behavior that falls between the extremes of violent coup d'etat and the armed forces' full compliance with their civilian masters, has proven more difficult to theorize about, however, even though it is perhaps the most important dependent variable that concerns civil–military relations scholars. One of the key problems of civil–military relations theory is that accurately measuring the gradations between the two end points of the coup/no-coup dichotomous spectrum is extraordinarily difficult, given the complexity of cases, the number of potential explanatory variables, and their varying importance relative to one another.

Still, several scholars, from Samuel Finer to Alfred Stepan, have succeeded in refining explanations of the progressive stages of military influence.[7] Timothy Colton distinguishes between four broad policy domains in which the military is generally interested in expressing its preferences (internal, institutional, intermediate, and societal) and identifies four methods that officers use to exert their influence (official prerogative, expert advice, political bargaining, and force).[8] Stepan, on the other hand, lists eleven "military prerogatives," areas in which the military as an institution assumes an acquired right, formal or informal, to exercise control over its own internal governance and to play a role in extramilitary jurisdictions within the state apparatus that are germane to its interests.[9] These areas include: the armed forces' constitutionally sanctioned independent role in the political system; their relationship to the chief executive, the government, and the legislature; and their role in intelligence, police, as well as in military promotions, in state enterprises, and in the legal system. Stepan also classifies the military's behavior in each of these areas as "low," "moderate," and "high" to mark the extent of the armed forces' political interference in democratizing regimes. The tools Colton and Stepan devised are not flawless—Colton's construct would be hard

Press, 1990), 6; and James Burk, "Theories of Democratic Civil-Military Relations," *Armed Forces & Society* 29 (Fall 2002): 7.

[6] See, for instance, John Johnson, ed., *The Role of the Military in Underdeveloped Countries* (Princeton, NJ: Princeton University Press, 1962); Edward Luttwak, *Coup d'État* (Cambridge, MA: Harvard University Press, 1968); and Donald Horowitz, *Coup Theories and Officers' Motives* (Princeton, NJ: Princeton University Press, 1980).

[7] See, for instance, Samuel Finer, *The Man on Horseback* (London: Pall Mall, 1962); Eric Nordlinger, *Soldiers in Politics* (Englewood Cliffs, NJ: Prentice Hall, 1977); Timothy Colton, *Commissars, Commanders, and Civilian Authority* (Cambridge, MA: Harvard University Press, 1979); and Alfred Stepan, *Rethinking Military Politics* (Princeton, NJ: Princeton University Press, 1988).

[8] Colton, *Commissars, Commanders, and Civilian Authority*, 231–249.

[9] Stepan, *Rethinking Military Politics*, 92–97.

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pressed to account for hidden influence, and Stepan's "low-moderate-high" gauge does not permit precise assessment—but both are quite helpful in the analysis of military participation in politics. They also succeed in pinpointing the conditions that enable and/or encourage generals to obstruct state policy.[10]

Understanding the concept of military influence in the case of contemporary Russia is particularly important, because coup theories would not provide a useful guide, given that Russian generals have not staged a successful coup d'etat in over 200 years. The absence of coups is in itself puzzling, in view of the country's tumultuous history. Brian Taylor contends that organizational culture theory offers the most persuasive explanation for this conundrum, because it emphasizes "the unique experiences in the life of an organization as an explanation for subsequent behavior."[11] Studying the Russian Army from the organizational culture perspective leads to an appreciation of the officer corps' view that armed intervention against the country's civilian leaders is fundamentally wrong. Taylor found that domestic structure theory—which is often utilized in the literature on development and modernization to explain military intervention—does not fit the Russian case. This theory explains military intervention by the strength or weakness of the state and its institutions, predicting that the armed forces will exploit the opportunity presented by an enfeebled state. The Russian officer corps, however, has consistently tried to avoid intervening at times of state weakness, owing to its conviction that such acts are illegitimate.

Michael Desch's structural theory approaches the essential civil–military problem from the perspective of the state, attempting to make generalizations about the power of civilian control over the military. He posits that civilian control is shaped primarily by structural factors, especially threats, which affect individual leaders, the military, and the state, as well as society. According to Desch's analysis, post-1991 civilian control in Russia is "mixed" (that is, not "good," "poor," or "worst") because the armed forces operate in an environment of low external and low internal threats, with external threat defined as one that "threaten[s] the entire state, including the military."[12] Desch's theory, however, cannot accommodate the very real possibility of discrepancies in the threat perceptions of the state and the armed forces. This defect in his theory becomes evident when applied to our case, the opposition of Russian generals to defense reform. It is precisely the divergent threat assess-

[10] For a careful appraisal of these theoretical contributions, see Peter Feaver, "Civil-Military Relations," *Annual Review of Political Science* 2 (June 1999): 211–241.

[11] Brian Taylor, *Politics and the Russian Army* (New York: Cambridge University Press, 2003), 17.

[12] Michael Desch, *Civilian Control of the Military* (Baltimore, MD: Johns Hopkins University Press, 2001), 12.

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ments of Russian political and military elites that make this case so compelling: for the past fifteen years, the high command has tried and failed to fully convince state leaders that the United States and NATO pose a serious threat to the nation.

When looking for additional insights to help us understand civil–military relations in democratizing states, it is necessary to distinguish post-praetorian from post-communist regimes. In the former, where generals were the de facto state rulers, the *demilitarization of politics* was the objective of pro-democracy reformers. In the latter, where the military was an institutional servant of the Communist Party, the goal has been the *depoliticization of the military*.[13] Most democratization theorists agree that civil–military relations is one area in which the post-Communist past is beneficial rather than detrimental for democratizing states.[14] In the *ancien régime*, after all, the armed forces were under the firm control of the Communist Party and were kept in check by the internal security forces and a number of other control mechanisms. In short, there were no major problems that endangered civilian oversight and this, as conventional wisdom would have it, must bode well for the democratic era. There are two important qualifications to this claim, however.

The first qualification relates directly to what Thomas Nichols has called the "constitutional complication," the notion that although legal regulations governing civil–military relations in the USSR (and in other Communist states) existed, they meant little, given the dominant position of the Communist Party over state institutions, including the judiciary.[15] This complication is significant because given that in practice, constitutional and legal norms were more or less inconsequential, space opened up for differing interpretations of loyalty, particularly once power dynamics began to shift in the late 1980s. Put more concretely, a very real dilemma was bound to arise: should officers be loyal to the core party tenets with which they had been indoctrinated since childhood, or should they follow the seemingly capricious political directions emanating from Mikhail Gorbachev's Kremlin?

The second qualification has to do with the fundamental changes that took place in civil–military relations during the Gorbachev era (1985–1991). Gorbachev encouraged internal debate, not only in the Communist Party but also in the ranks of the military. He actually invited serving officers to par-

[13] Zoltan Barany, "Democratic Consolidation and the Military," *Comparative Politics* 30 (October 1997): 26–28.

[14] See, for instance, Samuel Huntington, *The Third Wave* (Norman: University of Oklahoma Press, 1991), 232; and Valerie Bunce, "Rethinking Recent Democratization," *World Politics* 55 (January 2003): 175.

[15] Thomas Nichols, *The Sacred Cause* (Ithaca, NY: Cornell University Press, 1993), 11–12. For earlier discussions of this issue, see Dale Herspring and Ivan Volgyes, eds., *Civil-Military Relations in Communist Systems* (Boulder, CO: Westview, 1978); and Amos Perlmutter and William LeoGrande, "The Party in Uniform," *American Political Science Review* 76 (December 1982): 778–790.

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ticipate in politics as individuals and to voice their own opinions. Soon, independent officers' assemblies sprang to life and began criticizing the media's increasingly disparaging treatment of the armed forces and publicly denouncing the government and, in time, the General Secretary himself. In the end, Gorbachev's defense and security policies had profoundly damaged the Soviet military's social standing, its institutional cohesion, and its effectiveness and, ultimately, hastened its collapse.[16] The August 1991 coup attempt was a direct consequence of these developments. In sum, exploiting the weaknesses of the Communist Party leadership, military elites acquired a great deal of institutional autonomy and actively opposed, obstructed, and/or publicly criticized state officials and policy—such as the introduction of defense reform—more or less with impunity. Since the fall of the Soviet Union, their public assertiveness has seemingly become a new institutional norm.

A number of recent studies have focused on contemporary Russian civil–military relations and, more directly, on the politics of Russian defense reform. The compendium edited by Steven Miller and Dmitri Trenin provides detailed and up-to-date analyses of the social and political conditions, the military reform, and, more generally, the trajectory of the Russian armed forces.[17] Miller's introduction identifies the key reasons for the lagging defense reform, including some often neglected ones, such as the political elites' traditionally deferential attitude toward the armed forces that inhibits policy implementation. One of the key contributions of this volume is Alexei Arbatov's conception of what *real* defense reform should entail and the ways in which its objectives might be realized.[18] Aleksandr Golts's insightful account of the actual workings of Russian military politics is anchored in a systematic discussion of the gradual degeneration of the military's socioeconomic conditions.[19] Another recent work argues that the absence of Russian military reform should be viewed as a legacy of the long-standing state militarism in Russia and the Soviet Union, reaching back to the reign of Peter the Great.[20] Importantly, all of these authors share my skepticism about the prospects of substantive reform in the foreseeable future. Although I am in broad agreement with the arguments of their analyses, my approach differs from theirs, insofar as I contend that it is important to duly recognize the reforms that *have been* implemented in Russia. Furthermore, I believe that the extant

[16] The magisterial account of this process is William Odom, *The Collapse of the Soviet Military* (New Haven, CT: Yale University Press, 1998).

[17] See the chapters by Aleksandr Golts, Alexei Arbatov, and Pavel Baev, respectively, in Steven Miller and Dmitri Trenin, eds., *The Russian Military* (Cambridge, MA: MIT Press, 1994).

[18] Alexei Arbatov, "Military Reform: From Crisis to Stagnation" in Ibid., 95–120.

[19] Aleksandr Golts, "The Social and Political Condition of the Russian Military" in Ibid., 73–94.

[20] Alexander Golts and Tonya Putnam, "State Militarism and Its Legacies," *International Security* 29 (Fall 2004): 121–158.

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theoretical contributions sketched out above enhance our understanding of these phenomena.

WHAT *HAS* BEEN DONE? A FIFTEEN-YEAR REPORT CARD

The modern Russian Army was established in May 1992, following Moscow's failed attempts to maintain unified ground and air forces with Ukraine and other states within the framework of the Commonwealth of Independent States (CIS). Since its creation, the military has been the target of numerous reform proposals, but the sweeping changes it so clearly needs have not been carried out. This is not to say, however, that the armed forces have remained unaffected by the epochal changes around them.

Doctrine

In the wake of the Cold War, the post-Soviet military establishment had lost its traditional external mission along with a significant portion of its arsenal located in what became the member states of the CIS. The presence of nearly 25 million ethnic Russians outside the Russian Federation's borders was an additional stimulus in the adoption of a new military doctrine. The debate centered on potential threats to Russian security that military elites were determined to exaggerate in order to secure large defense outlays. Many politicians insisted that only internal security challenges existed, which required modest military budgets and a significant reduction of the bloated armed forces inherited from the Soviet Union. Still, according to several analysts, President Boris Yeltsin allowed generals to adopt a military doctrine largely of their own design—albeit they did not receive the funds for its implementation—partly as a reward for rescuing him in October 1993, even though it sharply contradicted his personal blueprint.[21] This document, in effect, gave a retroactive approval for military intervention in domestic political disputes.[22]

The main problem in official Russian writings on doctrinal issues is that they often lack internal logic. On the one hand, they claim that Russia's is a defensive doctrine, that the country does not have a specific strategic enemy, that the main challenges to its security are fundamentalism, armed separatism, terrorism, smuggling, and other "soft" security threats. On the other hand, the

[21] Stephen Foye, "Updating Russian Civil-Military Relations," *RFE/RL Research Report* 2, 19 November 1993, 48; John Lloyd, *Rebirth of a Nation* (London: Michael Joseph, 1998), 124; Zoltan Barany, "Politics and the Russian Armed Forces" in Zoltan Barany and Robert G. Moser, eds., *Russian Politics* (New York: Cambridge University Press, 2001), 191–192; and, more generally, Dmitri Trenin and Aleksei Malashenko, *Russia's Restless Frontier* (Washington DC: Carnegie Endowment for International Peace, 2004), 104.

[22] For a good summary, see Alexei Arbatov, *The Transformation of Russian Military Doctrine* (Garmisch-Partenkirchen, Germany: George C. Marshall Center, 2000).

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doctrine maintains that Russia needs a large army along with heavy armaments and a generous budget. The problem is rooted in a fundamental conflict of interest between the government, which needs to tailor defense according to the international security environment and fiscal realities, and the General Staff (GS), which does not want to part with its massive army. For instance, the first two parts of a new doctrinal document that the GS deliberated in October 2003 were insightful analyses of political and strategic operational issues. These were developed by the MOD under the guidance of DM Sergey Ivanov. The third part—concerned with manpower, weapons, and budgets—however, squarely contradicted the first two sections.[23] This part was formulated by the GS, which has yet to lose its Cold War mentality.

Force Reduction

The most readily apparent difference between the armed forces of 1992 and those of 2006 is that the latter are considerably smaller than the former. At the time of its creation, the Russian Army's manpower stood at 2.88 million uniformed personnel (1.5 million fewer than in the Soviet Army in 1986), over half of whom were drafted soldiers and noncommissioned officers (NCOs). The downsizing process, which was implemented in several stages and included the repatriation of over one million troops and dependents from eastern Europe and the Baltic States, has progressed relatively smoothly and has resulted in force reductions of over 50 percent. Although much of the armed forces leadership has bitterly resented state demands to decrease the military's size, the generals have completed this massive operation on time and without incident. This is a tremendous accomplishment.

Since January of 1999, when the official manpower figure was 1.2 million, no major troop reductions have taken place, despite DM Igor Sergeyev's 2001 promise—itself a reiteration of Putin's pledge of the previous year—to further decrease the army's size by 365,000 officers and soldiers and 120,000 MOD employees.[24] According to its own data, in May of 2003, the MOD employed 1,162,000 uniformed personnel and 840,000 civilians.[25] Nevertheless, the MOD announced in late December 2004 that as of January 2005, the total strength of the Russian armed forces, after cutting 100,000 troops from its rosters, would be 1,207,000 servicemen and 876,000 civilian personnel.[26] As this discussion suggests, accurate statistics about the armed forces are notoriously hard to

[23] "Defense Minister Encircled by Generals," *Novaya Gazeta*, October 2003, 20–22; and "A New Military Doctrine in Russia?" MIK Information Agency (Moscow), 14 October 2003. For the official view, see Sergey Ivanov, "Russia Rethinks Security," *Defense News*, 1 December 2003.

[24] Pavel Felgenhauer, "Military Cuts Illusory," *Moscow Times*, 30 August 2001.

[25] See "Russian Armed Forces Are Over One Million Men Strong Now," RIA Novosti (Moscow), 13 May 2003; and "Army More Than Halved Since 1992," Interfax (Moscow), 9 April 2003.

[26] "As of January 1, 2005 Total Strength of Armed Forces Will Be 1,207,000," RIA Novosti (Moscow), 27 December 2004; and see RFE/RL, 15 November 2004, 8.

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come by. The military's manpower may be significantly lower than published figures indicate, since base commanders routinely inflate the staffing levels of their units for two reasons. First, if the MOD orders additional cuts in personnel, those can be easily "implemented" by scrapping vacant slots. Second, overstating the number of troops enables commanders to collect food and equipment rations as well as salaries and benefits allocated to nonexistent personnel, which can then be used to alleviate the unit's financial difficulties or to line one's own pockets.

Most importantly, *reduction does not equal reform*. The army's quantitative diminution by no means suggests its simultaneous qualitative improvement. Force reduction enhances neither the effectiveness nor the combat readiness of the armed forces; it just makes them smaller.

Reorganization and Restructuring

The restructuring of the armed forces has been a contentious process mainly because military leaders have often subordinated the national interest to the interests of their own services. For instance, former DMs Pavel Grachev and Igor Sergeyev insisted on enlarged responsibilities for and preferential treatment of the airborne troops and the strategic nuclear forces, respectively, despite the imperatives of substantive reform. Nonetheless, several structural changes have taken place in the past twelve years, most during Sergeyev's tenure (May 1997–March 2001). The highlights include the abolition of the ground forces headquarters, the merging of the air defense branch into the air force, and the reduction of the number of military districts to six, with the amalgamation of the Siberian and Trans-Baykal districts and the Volga and Ural districts. (Actually, the headquarters of the former Volga military district were redesignated as the headquarters of the Second Army, and thus no units were actually disbanded.) A total of 209 units were to be assigned to "permanent combat readiness" status, which requires that their staffing levels be raised to at least 80 percent (all volunteer contractors) and that they be fully equipped and capable of fulfilling combat missions in peacetime and wartime without additional mobilization.[27] By April of 2003, seventy-two such units existed and, although aggregate figures have not become available since then, it is clear that increasing their number (by twenty-nine units in 2005, twenty units in 2006, and eleven units in 2007) remains a priority for the MOD.[28] Moreover,

[27] Sergey Ivanov, "Russia's Geopolitical Priorities and Armed Forces," *Russia in Global Affairs*, 17 February 2004.

[28] Nikita Petrov, "There Is No Threat, but We Do Need To Arm Ourselves," 29 April 2003, accessed at http://www.strana.ru, 17 May 2005. See also "Chief of Russia's General Staff Speaks About Current Challenges," *Krasnaya Zvezda*, 6 November 2004; and Aleksander Konovalov, "Defense Minister Rules Out Full Switch to Contract Military in Foreseeable Future," ITAR-TASS (Moscow), 2 February 2005.

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the number of military colleges and training schools was reduced from more than one-hundred to about fifty in order to save money and streamline professional education. Two of Sergeyev's reforms were reversed under his successor, Sergey Ivanov: both the ground forces headquarters—their importance is underscored by the several armed conflicts on Russia's borders—and the space forces were reestablished as independent entities, and the latter was integrated into the air force. As a result of the recent consolidation of various branches—for instance, the air defense forces have been folded into the air force—the Russian armed forces now maintain four separate services: army, navy, air force, and the strategic missile forces.

The public debate among political parties, the government, and the defense establishment regarding the professionalization of the armed forces is now over a decade old. The main dilemma has been the ratio of volunteers versus draftees in the armed forces. Contract soldiers and NCOs currently account for 21 percent (244,000) of the armed forces personnel. The MOD contends that approximately 25 percent of airborne troops are under contract.[29] The ministry has not been fully satisfied with the quality and discipline of the recruits, many of whom, in turn, have not found the terms of service attractive enough to renew their contracts. A 2006 MOD study reveals that no more than 19 percent of contract soldiers reenlist, mostly because of poor housing conditions and lack of opportunity for rest and leisure.[30]

De-politicization

During the late 1980s, the military began to lose some of its institutional autonomy, owing to the increased outside scrutiny allowed by *glasnost* and the nascent democratization efforts. The same political processes, however, undermined the behavioral norms and standards that had theretofore governed Soviet civil–military relations. Military personnel began to actively oppose, obstruct, and/or publicly criticize state policy with impunity. The demands of reestablishing civilian control required the comprehensive de-politicization of the armed forces in the post-Soviet period. This has not happened. What has?

The military was "de-partified" in 1991 when President Yeltsin issued a decree that abolished Communist Party organizations in the Committee for State Security (KGB), the Ministry of Internal Affairs (MVD), and the armed forces. A large proportion of the military elite endorsed the Party's banishment from the army and the abolition of the Main Political Administration (MPA), which was responsible for political-ideological indoctrination. Political officers, the MPA's foot soldiers, were replaced with division-level "educational

[29] RFE/RL, 31 July 2002, 6.

[30] Ekho Moskvy Radio (Moscow) 0700 GMT, 24 August 2006, in BBC Monitoring and RFE/RL, 25 August 2006, 10, citing an article in *Nezavisimaya Gazeta* of the previous day.

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officers," although in practice, the individuals often remained the same. In 2002, however, Chief of the General Staff (CGS) Anatoliy Kvashnin partially reversed this decision by reinstating political officers at army- and corps-command levels. The law does not prohibit active-duty military personnel from running for or holding political office. While in office, they are on a suspended active-duty status. Since 1991, dozens of military officers have been elected as governors and Duma (the Russian legislature's lower house) members, and many have received presidential appointments to serve in important political posts. Their active political participation has been fairly minor, however, compared to that of security services personnel under President Putin's reign.

Budgetary Oversight

In the past fifteen years, the Russian legislature has not gained sufficient authority over the federal budget, one-third of which is taken up by the so-called "power ministries" (defense, interior, nuclear power, emergency situations, etc.). The government, and especially the MOD, routinely refuses to share pertinent information with the legislature or supplies opaque data. Few details of the defense budget are accessible, even to Duma deputies, whose budgetary oversight is limited, owing to their lacking capacity for the independent analysis of the budget or of defense policy. At the same time, the government appears to view the legislature's attempts at scrutinizing the armed forces' finances as hostile acts. This lack of transparency actually violates the 1998 law on budget classification.

President Putin has been displeased with the Duma's budgetary process, particularly with the deputies' "bargaining." In 2001, he suggested that the federal budget should be put together by the government and that the Duma would simply approve it or reject it without discussion. In 2002, nonetheless, deputies of the liberal Union of Rightist Forces (SPS) successfully negotiated for the partial declassification of the 2003 draft defense budget by threatening the entire SPS faction's vote against it if transparency did not improve. Transparency was only marginally increased in 2003, when the government agreed to make public some additional elements of the 2004 military budget. But the difference for members of the legislature was getting fifty-nine lines instead of the previous five lines of text from the MOD, much of it containing little useful information or traceable figures.[31] The December 2003 parliamentary elections, in which whatever robust opposition existed to Putin and the quasi-party United Russia was rendered irrelevant, seemed to obviate the need for

[31] See Aleksei Arbatov and Petr Romashkin, "Bjudzhet kak zerkalo voennoi reformy," *Nezavisimaya Gazeta*, 17 January 2003; "Cabinet To Make Public 2004 Military Budget Elements," RIA Novosti (Moscow), 12 November 2003; and "Inflated Ranks, Tiny Budget, and Enduring Paranoia" (interview with Aleksei Arbatov), 24 August 2004 accessed at http://www.gazeta.ru/english, 30 November 2004.

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expanded transparency. Much of the defense budget is still shrouded in secrecy. For instance, not even Duma members—to say nothing of the press and the general population—could determine what proportion of the substantially enlarged 2005 defense budget would be spent on research and development.[32] Moreover, even Duma Defense Committee members are furnished with virtually no details about how the MOD actually spends the funds once they are allocated.

Increasing Civilian Presence in the Military

The appointment of a civilian DM is an important ingredient of democratic civil–military relations. Technically, Igor Rodionov became Russia's first civilian DM in December of 1996—five months after being appointed by Yeltsin—when the President transferred him to the reserves in order to "reflect the progress of Russian democracy." Actually, the emptiness of this gesture was demonstrated by the fact that the MOD had continued to be staffed entirely by military men and by the active-duty status of Rodionov's successor, General Igor Sergeyev. Russians finally did get a truly civilian DM in March of 2001, when Putin appointed his close associate, Sergey Ivanov, to the post. A former foreign intelligence service general, Ivanov became perhaps the most politically powerful DM in Moscow since Dmitry Ustinov, an influential Politburo member in the 1970s and 1980s. Putin made another important civilian appointment naming a woman, Lyubov Kudelina, as deputy DM responsible for financial affairs. Kudelina, who previously served as deputy finance minister responsible for the defense sector, has been an advocate of keeping the MOD's finances secret and thereby limiting the legislature's oversight authority. Russian political elites have discouraged the rise of civilian specialists on military-security issues, because they have little to gain from the independent scrutiny of the defense establishment. There are few autonomous organizations that focus on military matters, and these tend to be supportive of state policy. Another factor discouraging the emergence of civilian defense specialists is the continued obsessive secrecy in Russia—virtually everything having to do with security and defense is considered a "state secret"—which has deterred individuals from trying to acquire expertise on these matters.

The Kremlin has also applied growing pressure on the few newspapers that publish articles critical of the military reform's progress. In October of 2003, for instance, it impelled the editors of *Moskovskiy Komsomolets* (and pressured managers of others newspapers) to stop publishing the columns of Pavel Felgenhauer, one of the country's few independent security experts. Even

[32] Jeremy Bransten, "Moscow Raises Spending for Defense, Police, Secret Services," RFE/RL (Prague), 24 August 2004; and "Russia To Adopt New Militarized Budget," AFP (Moscow), 29 September 2004.

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more troubling has been the prosecution of scholars working on defense-related issues (Igor Sutyagin, for example) and military journalists (for example, Grigoriy Pasko) who ask inconvenient questions. They can be—and have been—jailed for years without proper trial, the eventual outcome of which is rarely in doubt. "When the authorities decide that they are going to convict you of something," as one scholar comments, "there is absolutely no way to win."[33]

In sum, "defense reform"—to the extent that what has taken place since 1991 may be called that—has fallen far short of radically transforming Russia's armed forces. A decade after the collapse of the Soviet Union, Colonel-General Leonid Ivashov, the head of the MOD's main directorate for international military cooperation until 2001, lamented that "we have been doing nothing but talking about the reform of the armed forces and making some incomprehensible attempts in this direction."[34]

The Options: Quality versus Quantity

In the last decade, the decline of Russia's military has received ample attention from scholars and journalists.[35] Only a brief summary is, therefore, necessary to appreciate the need for major reform and to properly assess existing reform proposals.

The State of the Russian Army

The system of conscription has encountered major obstacles since the late 1980s. In recent years, no more than 10 to 12 percent of the young men called up have actually entered military service. Until recently, there were twenty-

[33] Cited in Michael Flynn, "Russia: Spy Mania," *Bulletin of the Atomic Scientists* 58 (September–October 2002): 16. See also Peter Baker, "Treason Trial for Russian Researcher Delayed Indefinitely," *The Washington Post*, 25 December 2003; and Grigorij Pasko, "Der Spion der keiner war," *Osteuropa* 55 (January 2005): 91–103.

[34] Leonid Ivashov, interviewed in *Nezavisimaya Gazeta*, 18 December 2001.

[35] See, for instance, Pavel Baev, *The Russian Army in a Time of Troubles* (London: Sage, 1996); Dale Herspring, *Russian Civil-Military Relations* (Bloomington: Indiana University Press, 1996); S.S. Solovyev and I.V. Obraztseov, *Rossiyskaya Armiya ot Afganistana do Chechni* (Moscow: Natsionalniy Institut imeni Yekateriny Velikoy, 1997); Robert Barylski, *The Soldier in Russian Politics* (New Brunswick: Transaction, 1998); P. Gazukin, *Rossiyskaya Armiya na poroge XXI veka* (Moscow: Panorama, 1999); Stephen J. Cimbala, ed., *The Russian Military into the Twenty-First Century* (London: Frank Cass, 2001); P. Gazukin, *Stroitel'stvo i reformirovanie vooruzhennykh sil RF v 2000–2001 gg* (Moscow: Panorama, 2001); Anne C. Aldis and Roger N. McDermott, eds., *Russian Military Reform, 1992–2002* (London: Frank Cass, 2003); Miller and Trenin, eds. *The Russian Military*; and Aleksandr Golts, *Armiya rossii: 11 poteryannikh let* (Moscow: Zakharov, 2004); Stephen L. Webber and Jennifer G. Mathers, *Military and Society in post-Soviet Russia* (Manchester, UK: Manchester University Press, 2006); and Dale R. Herspring, *The Kremlin and the High Command* (Lawrence: University Press of Kansas, 2006).

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five legal grounds for deferment, based mostly on medical, family, and occupational status. In 2006, however, in line with the defense reform, nine deferment categories were abolished by the legislature (for instance, athletes and artists are no longer exempt). Those who cannot get deferments usually bribe the authorities. About 40,000 (that is, a number sufficient to staff three-and-a-half divisions) a year simply dodge the draft. The military ends up with the least desirable men of their cohort. Data on the 2002–2004 conscription cycles show that about half of the draftees were neither employed nor in school and approximately the same number had health problems. Moreover, one-fifth did not complete secondary education, one-ninth had a criminal record, nearly the same proportion were alcoholics and/or regular drug users, and some were illiterate.[36] Once in the service, draftees are often treated as serfs, and the widespread and brutal hazing drives thousands to desertion, suicide, or violent crime annually. Low morale breeds poor discipline which, in turn, causes frequent mishaps. Non-governmental organizations (NGOs) claim that approximately ten soldiers a day die in accidents and noncombat-related activity; the MOD admits 1,200 noncombat deaths in 2002.[37] According to the Defense Ministry, 662 servicemen died in the first eight months of 2005: of these, 182 committed suicide, 374 died in accidents, 14 were murdered by fellow soldiers, and 74 were killed in action in Chechnya.[38] Opinion polls show growing public opposition to conscription (64 percent in 2002), especially when the respondent's close relative is the putative conscript (74 percent in 2002, 77 percent in 2004).[39]

Similar problems plague the corps of NCOs, who should be the backbone of the armed forces. Unlike in Western armies, in which NCOs constitute a cadre of highly trained, effective, and competent middle managers, they remain the most underutilized human resource in the Russian military. They seldom receive specialized training, possess minimal independent decision-making powers, and command little respect from officers and soldiers alike. Owing to meager wages, inadequate living conditions, and antiquated equipment, tens of thousands of NCO positions are unfilled.

Since 1991, more than 450,000 officers have quit military service for similar reasons. Salaries, although repeatedly raised under Putin, remain low: full

[36] See Zarina Khisamova, "Spring Recruitment," *Ekspert* 17 (April 2002): 61–62; "Russian Army Puts Up Stiff Resistance To End of Draft," AFP (Moscow), 25 April 2003; and "Russian Army Fears Record-Low Draft," RFE/RL, 1 October 2004, 8.

[37] "Estimates of 'Natural Wastage' in Russian Armed Forces Vary Widely," *Izvestiya*, 24 August 2000; and "Death Rate High in Russian Army," BBC (Moscow), 13 September 2003.

[38] See the MOD's website at http://www.mil.ru, 12 September 2005, accessed 14 September 2005. The Chechnya-related figure does not include casualties suffered by the Interior Ministry or the Federal Security Service.

[39] See "We Love the Army, But in a Strange Way," *Vremya Novostei*, 22 February 2002; and "Most Russians Do Not Want Relatives To Serve in Army," Rosbalt (Moscow), 24 February 2004.

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colonels are often paid less than bus drivers. According to a 2003 MOD survey, fewer than half of the officer corps want to remain in the service and more than a third of officers (and their families) live below the poverty line.[40] At the same time, the rank structure remains top-heavy, with approximately 1,500 generals (about 200 in the MOD central staff alone), who often remain in rank even after their positions are reclassified to colonel status.[41] Crime and corruption—from insubordination and selling of weapons (in some cases to the enemy) to large-scale theft and embezzlement—have become commonplace: prosecutors described half of the almost 23,500 crimes registered in the army and navy alone in 2001 as "serious."[42] Three years later, Aleksandr Savenkov, the chief military prosecutor, revealed that between 2002 and 2004, the number of crimes in the armed forces had grown by 25 percent; hazing-related offenses grew by 25 percent, and senior officers committed 46.9 percent of all criminal offenses.[43]

Equally detrimental has been the armed forces' loss of institutional confidence, hardly a surprising development, considering the humiliations that have befallen the military in the last quarter century. Until the late 1980s, the army was the most important and privileged Soviet institution, save for the Communist Party. In 1979, however, a string of calamities began with the invasion of Afghanistan, followed by the ill-conceived and counterproductive policies of the Gorbachev era and the repeated deployments of army units against unarmed civilians in Georgia and the Baltics that shook the public's traditional confidence in the military. The streak of misfortunes only continued with the loss of the Soviet Union's external and then internal empire, the collapse of the state itself, crippling budget cuts, and the mismanaged and ruthless wars in Chechnya. These tribulations have generated a profound negative shift in the military's institutional psychology that has undoubtedly contributed to its pervasive malaise.

Reform Proposals under Yeltsin

Although the dire need for defense reform was already obvious at the time of the new Russian Army's creation in 1992, few coherent reform programs had emerged. President Yeltsin appointed numerous commissions to study military

[40] Cited in Fred Weir, "Iraqi Defeat Jolts Russian Military," *Christian Science Monitor*, 16 April 2003. See also, Vadim Soloviov, "An Extremely Neglected Security Issue," *Nezavisimaya Gazeta*, 12 September 2002; and Pavel Baev, "The Plight of the Russian Military," *Armed Forces & Society* 29 (Fall 2002): 129–146.

[41] "Generals Refuse To Leave Army," *Novye Izvestia*, 25 April 2002.

[42] Soloviov, "An Extremely Neglected Security Issue." See also Alexander Golts, "The Final Excuses for Army Corruption," *Russia Journal*, 7 June 2002; and V.V. Savel'ev, *Kak vyzhit' v neustavnoi armii* (Rostov-on-Don, Russia: Feniks, 2003).

[43] ITAR-TASS (Moscow), 24 May 2005; reported by RFE/RL, 25 May 2005, 9.

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reform, most of which faded into oblivion a short time after their formation. The policy of Russian governments until the mid-1990s was to cut budgets, postpone substantive reform until the economy's eventual turnaround, and reduce manpower. In terms of changing the military, downsizing was the most important achievement of the Yeltsin era.

After the 1995 Duma elections, three distinctive approaches emerged in the legislature regarding defense policy in general and military reform in particular.[44] The first view was emblematized by former generals, who argued that Russia's economic, social, and foreign policies should be adjusted to accommodate the needs of the military establishment. The second group was represented by the ruling elites (the Our Home is Russia [OHR] party as well as supporters of the Yeltsin administration), who perceived military reform as reconciling the army to meager defense budgets and who tended to underestimate the armed forces crisis. The third group was comprised of members of the parliamentary opposition, who advocated a balanced and consistent defense policy, including higher defense outlays to support military reform. Given the post-1995 dynamics of Russian politics, it was hardly surprising that the second approach dominated. Prior to the 1995 Duma elections, the OHR enticed the popular general, Lev Rokhlin, to join its ranks, assigning him the third place on its electoral list. After the election, the OHR nominated him to the chairmanship of the Duma's Defense Committee, its most important organ on military affairs. In that post, Rokhlin turned out to be an uncompromising critic of the administration's defense policy, however, and was pushed out of his chairmanship in May of 1998.

Alexander Lebed, a former paratroop general who gained national visibility by stabilizing the political situation in Transdniestria in 1993–1994 and negotiating the cease-fire that concluded the first Chechen war in 1996, was the leading advocate of military reform in the armed forces. Lebed, who was briefly National Security Advisor and the head of the Security Council in 1996, believed that Yeltsin's election promise to end the draft and create a fully professional army by 2000 was absurd. He called for force reduction by a third and the creation of a smaller number of fully manned, combat-ready divisions (he referred to them as "small mobile fists to solve all problems").[45] After his dismissal from his national posts, however, Lebed ceased to be a factor in the defense reform debate.

Reform Proposals under Putin

In the last several years, discussions of military reform have intensified, particularly because conditions in the armed forces have continued to deteriorate.

[44] See Arbatov, "Military Reform in Russia," 113–115.

[45] Harold Elletson, *The General Against the Kremlin* (London: Little, Brown, & Co., 1998), 272.

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Putin's apparent interest in bringing about military reform seemed to sharpen after the August 2000 tragedy of the *Kursk* nuclear submarine and what it conveyed about the state of the armed forces.[46] In a speech delivered shortly after the accident, he remarked that

> discussions of military reform have been going on in our country for quite a while—for at least eight years and maybe even a decade—but, unfortunately, there has been little headway in this respect. I hope very much that we will be able to secure positive changes.[47]

More recently, reform discussions were fueled by the 2003 U.S. victory over Iraq despite the predictions of Russian generals. The crushing defeat of the Iraqi armed forces—that, in many ways (low-tech arsenal, low morale, and lacking motivation) were a replica of the Russian military—exposed the large and growing gap between American and Russian capabilities and made an indelible impression on Russian military and political elites.

The wide-ranging debate spawned numerous reform concepts. Aside from the government (especially, of course, the MOD), the most vocal supporters of defense reform were political parties, particularly the Union of Rightist Forces (SPS). It is important to note that in the December 2003 Duma elections, the parties that were willing and able to criticize Kremlin policies—particularly the pro-Western SPS and Yabloko—did not succeed in passing the 5 percent threshold necessary for representation. Moreover, only a total of six of their delegates gained seats in single-mandate races. The future importance of potentially troublesome independent deputies was counterchecked in the fall of 2004, when, in a further step to ensure a thoroughly compliant legislature and, more generally, noncompetitive politics, Putin's regime eliminated the single-member district system for the Duma. In the summer of 2003, however, it seemed that the SPS and other parties still had some chance of substantively contributing to the policy debate.

The SPS. From the mid-1990s until the fateful 2003 parliamentary elections, Boris Nemtsov, the co-chairman of the liberal SPS, was the most ardent and consistent proponent of radical defense reform in Russia. The fundamental premise of the SPS proposal was that conscription was unfair, unpopular, and inefficient and had to be abolished as soon as possible. The SPS, together with the Institute of Transitional Economy, developed an ambitious and comprehensive reform plan, the key proposal of which was to end conscription and transform the entire armed forces into contract-based professionals in no more than four to five years (some versions deemed as little as eighteen to

[46] See Zoltan Barany, "The Tragedy of the *Kursk*: Crisis Management in Putin's Russia," *Government and Opposition* 39 (Summer 2004): 476–503.

[47] Quoted in "Putin on Sunken Nuclear Submarine, Military Reform," Bloomberg (Moscow), 24 August 2000.

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twenty-four months to be sufficient).[48] The plan, which was estimated to cost R90 billion (approximately $2.9 billion) and required only a 2 percent increase in defense outlays, according to its backers, allowed for the introduction of a voluntary six-month military training course, at the end of which participants would have the option of signing a contract with the military or returning to civilian life. It also called for doubling the contract soldiers' salaries to about 15 percent above the average wage and supplementing them with various bonuses (for combat duty, for example) in order to attract qualified and motivated candidates. At the same time, Nemtsov and his colleagues argued, manpower needed to be further reduced to around 800,000–850,000, in line with the MOD's own long-forgotten plans unveiled in 2000. In addition, the SPS promoted retraining programs and covering the costs of higher education for veterans.

Nemtsov and his party were scathing critics of the Pskov experiment, into which the top brass had sunk a great deal of financial and political capital. They argued that the GS used the conversion of the 76th paratroop division in Pskov—a town 800 miles northwest of Moscow—to volunteers as a ploy to prove the staggering cost of professionalization. The MOD estimated the cost of converting every conscript position to contract status at R1 million (approximately $32,250) and, accordingly, requested and received R3 billion (approximately $96 million) from the Ministry of Finance to hire the 3,000 soldiers necessary to staff the division. In line with their financial request for the Pskov experiment, the GS claimed that for the professionalization of the entire army (as the SPS proposed), the MOD would need to convert 400,000 conscript positions to contract positions with the overall price tag of R400 billion (approximately $13 billion). As Nemtsov said, "We [the legislature] will never find 400 billion and therefore there will never be any reform."[49]

The SPS was quick to point out that the generals spent the bulk of the R3 billion in Pskov on unnecessary capital investments, such as building apartment blocs for contract soldiers. SPS politicians contended that the army would be much better off renting apartments to volunteers with families, raising salaries, and improving its arsenal rather than spending scarce funds on apartment construction. Certainly, the MOD's scheme to run up the cost estimates of the military's conversion could not have been more transparent. After all, why were the generals suddenly so intent on building apartments for privates when, according to their own data, in late 2002, 168,000 officers and their families had

[48] See, for instance, "Professional Armed Forces May Not Appear In Russia in the Near Future," *Defense and Security* 118 (October 2002), accessed on the website of the WPS Russian Media Monitoring Agency at http://wps.wm.ru, 17 October 2002.

[49] Interview with Boris Nemtsov, Ekho Moskvy Radio, 27 September 2002. The army's finance specialists seemed to have been ordered to generate prohibitively high conversion cost estimates. See Alexander Golts, "General Staff Strikes Back," *Russia Journal*, 1 February 2002.

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no apartments to live in? In any event, by 2006, even the military saw the Pskov experiment as a dismal failure.[50]

Other parties. Many politicians and parties, however, have been opposed to the end of conscription. Their view of defense reform largely corresponds to their ideological hues. For example, the left-wing opposition, led by the Communist Party of the Russian Federation (KPRF), supports the restoration of Russia's great-power status and insists that the United States remains the country's primary enemy.[51] Together with the Working Russia movement, the KPRF agrees with the GS that maintaining a large conscript-based army is a top priority. The Unity Duma faction—a strong supporter of the President—has proposed to allow Russian youth to avoid military service by taking a $600, six-month course of military training.

In contrast, the liberal democratic Yabloko—along with the SPS one of the few sources of democratic opposition to Putin until the December 2003 parliamentary election—was sharply critical of the shortcomings of defense reform. Its leaders advocated increased defense spending to allow the rapid abrogation of conscription and conversion to a contract-based army, force reduction to a total of 800,000 uniformed personnel, doubling the salary of all servicemen and officers, and changing the ratio of the current budgetary spending to 50 percent on maintenance and 50 percent on technical upgrading. Yabloko repeatedly pointed out the inconsistencies between the Kremlin's and the MOD's doctrinal and reform conceptions, such as the former's recognition of the absence of traditional security threats to Russia while the GS was predicting and was intent on preparing for a large-scale conventional war. Yabloko's effectiveness, however, was limited by the fact that after the 1999 elections, it filled only 17 of the 450-seat Duma. Since the 2003 parliamentary elections, both Yabloko and the SPS have become severely weakened and largely irrelevant. Their influence has correspondingly declined, leaving little opposition in the legislature for the MOD to contend with.

The MOD. Sergey Ivanov—who dismissed the SPS plan as "slapdash populism"—and the MOD bureaucracy have also privileged manpower issues in their reform proposals. Their plan is to fill most of Russia's 209 combat-ready units (in eleven divisions, seven brigades, and ten regiments) with contract servicemen by 2007. Nonetheless, conscription will continue and draftees will serve in all branches with the exception of combat and rapid-

[50] "Aggressive Helplessness," *Vedomosti* (editorial), 16 February 2006. For a detailed study, see Rod Thornton, "Military Organizations and Change: The 'Professionalization' of the 76th Airborne Division," *Journal of Slavic Military Studies* 17 (September 2004): 449–474.

[51] See G.A. Zyuganov, *Voennaya reforma: Otsenka ugroz natsional'noi bezopasnosti Rossii* (Moscow: Narodno-patrioticheskii Soiuz Rossii, 1997).

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deployment units. This plan also includes cutting compulsory military service from two years to one and the cancellation of many of the current draft exemptions. Conscripts would receive a six-month basic training and serve out the rest of their military service in noncombat units. (Ivanov conceded, however, that the reduced draft period would not start until 2007, and then only depending on the success of the military reform.[52]) A task force of government experts estimated a R135 billion ($4.34 billion) price tag for this plan—based on the aggregate cost analysis of individual units—most of which would go to wages and rebuilding barracks. Moreover, the MOD apparently realized that the lack of professional training for NCOs was a serious shortcoming, inasmuch as DM Ivanov promised to remedy the situation.[53]

Reducing the number of deferrals for conscripts—accomplished in 2006—has been an important component of the MOD's plan. As DM Ivanov has often charged, students enrolled in the military departments of universities were interested in them primarily to avoid serving in the military.[54] In the summer of 2005, Education and Science Minister Andrei Fursenko drastically reduced the number of these departments and upgraded the remaining ones to orient them toward students who genuinely want to serve in the armed forces. To alleviate the anticipated shortage of qualified contractors, Ivanov announced the MOD's plan, quickly approved by the government, to lure CIS citizens into the Russian Army with the promise of Russian citizenship, to be conferred following three years of service.[55] Given that this proposal is in direct conflict with legislation in several CIS states (Georgia and Ukraine, for example), its legal implications are unclear. The MOD's plan to allow women (who are not subject to the draft) to volunteer for combat units also requires new legislation. Ivanov has noted that contract soldiers would be recruited primarily to staff units in the "Northern Caucasus" (that is, Chechnya), which is likely to make professional service less appealing and would be consistent with the desires of the top brass. Skeptics suggest that the MOD's reform proposals—like others preceding them—would be long forgotten by 2007, their supposed completion date. Even if they were not, Ivanov could always blame the inadequacy of defense spending for lackluster outcomes.

The decision. In July 2003, the government decided to back the MOD's proposal of incremental expansion of volunteer service over the fast-track and less-expensive reform suggested by the SPS. According to the government-approved reform, by 2007, nearly half of the military will comprise contract

[52] Cited in Olga Tropkina and Maksim Glinkin, "Ivanov Drains Military Reform," *Nezavisimaya Gazeta*, 25 April 2003.

[53] Aleksandr Bogatirev, "Nam nuzhna sovremennaya Armiya," *Krasnaya Zvezda*, 17 April 2003.

[54] RFE/RL, 25 February 2005, 9.

[55] Khisamova, "Spring Recruitment," 62.

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personnel, salaries will be increased, and conscripted service will be cut to one year. The Kremlin announced that the reform would cost R79.1 billion ($2.6 billion), which is considerably less than the MOD's estimates. The GS elite had to be disappointed, because it did not want the reform launched until 2010. Nonetheless, by opting for the MOD's reform framework, the government once again favored the generals over a population that, according to a slew of opinion polls, overwhelmingly supports comprehensive defense reform.[56] The question is, why?

Explaining the Lack of Reform

How can we explain the long-delayed defense reform in Russia, where there is a strong President who is apparently eager to implement reforms and a military establishment that has traditionally been a reliable executor of state policy? Although there is no simple answer to this complex question, some of the insights of civil–military relations theory, combined with an understanding of the profound changes in the nexus between Russian political and military elites since the mid-1980s, do yield a satisfactory explanation.

The President and Military Reform

His oft-repeated rhetoric aside, it would seem logical to expect the Russian President to want to drastically reform the armed forces, given their abominable state. Putin is certainly aware of popular opinion, which has become increasingly interested in military reform. Moreover, one of the recurring themes of his speeches has been the restoration of Russia's great-power status, which would be difficult without the wholesale reform of the armed forces. But how potent are these reasons to expect robust reform activity from the state? Public opinion is often disregarded, even in consolidated democracies; it is hardly a reliable predictor of political action in an increasingly authoritarian state such as Russia. And the Kremlin may well be interested in attaining the trappings of great-power status—securing permanent membership in elite international forums such as the Group of Eight, gaining respect for the country and its representatives—rather than in its substantive dimension of expensive, messy, and thankless responsibilities.

Still, all things being equal, Putin appears to genuinely want substantive military reform. In 2000—after trying to make sense of the squabbles among the military elite—he announced that troop strength would be decreased from

[56] See, for instance, "Russians Unhappy with Their Generals," 28 April 2003, accessed at http://www.gazeta.ru, 12 May 2006; and Theodore P. Gerber and Sarah E. Mendelson, "Strong Public Support for Military Reform in Russia," PONARS Policy Memo No. 288, May 2003.

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1.2 million to 800,000. Subsequently, the force reduction was forgotten about and lip service replaced the preparations for restructuring. It has been argued that during his first presidential term, it was the military-security area in which Putin compiled the worst record of success while encountering the most damaging challenges to his leadership. The conclusion that four more years were lost for rehabilitating the military structures now appears self evident.[57]

But all things are not equal: the incentives to embark on substantive reform are far outweighed by the virtually insurmountable difficulties. After the culmination of the political struggle between the executive and the legislature in 1993, the Russian head of state acquired "superpresidential" powers. The President's prerogatives vis-a-vis the defense establishment further increased after Putin expanded his control over the power ministries (ministries of defense, interior, emergency situations, etc.) at the expense of the government. However, given his meteoric rise in the state administration, Putin did not have the opportunity to build a support base. He could rely only on the backing of his former colleagues in the St. Petersburg city bureaucracy and in the security establishment. Not surprisingly, army and KGB/Federal Security Service (FSB) (the successor of the KGB) officers and St. Petersburg politicos have been the primary beneficiaries of Putin's staffing decisions. In fact, social scientists have come to label the new Russian polity a "militocracy," in which FSB, and, to a far lesser extent, MOD and MVD bureaucrats make up a high percentage of the governing elite (9 percent of the Duma, 33 percent of the federal government, 35 percent of all deputy ministers, 58 percent of the Security Council, and 70 percent of presidential envoys, for example).[58]

Putin has been exceedingly popular among the power ministry personnel that—counting active and retired employees and defense industry workers and their dependents—comprises twenty million voters. His backing in the armed forces has been estimated to be 30–50 percent higher than in the country as a whole, though it is important to add that he has consistently registered 70-plus percent support in the general public as well.[59] Alienating such a large support base by forcing the military to implement an unpopular reform, especially one developed by the liberal democratic political forces so abhorrent to much of the army, would not be wise. Furthermore, without the generals'

[57] Pavel Baev, "Reforming the Russian Military" in Yuri Fedorov and Bertil Nygren, eds., *Russian Military Reform and Russia's New Security Environment* (Stockholm: Swedish National Defence College, 2003), 38.

[58] See, for instance, Olga Kryshtanovskaya and Stephen White, "Putin's Militocracy," *Post-Soviet Affairs* 19 (October–December 2003): 289–306.

[59] See Irina Isakova, "The Evolution of Civil-Military Relations in Russia" in Andrew Cottey, Timothy Edmunds, and Anthony Forster, eds., *Democratic Control of the Military in Postcommunist Europe* (London: Palgrave, 2002), 221.

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backing, who could the President entrust with the implementation of whatever military reform is eventually introduced? To be sure, as Taylor convincingly explained, the military's organizational culture makes its violent political interference in defense of its institutional prerogatives extremely unlikely. At the same time, the armed forces might resort to what Colton described as political bargaining—offering continued support to Putin and his regime in return for assurances that no reform would be forced on them—to uphold their interests.

A similarly salient issue is the war in Chechnya, with which Putin's ascendance was intimately connected. The army's performance in the second Chechen war—even if superior to its abysmal record in the first—might in itself be an argument for military reform. Nonetheless, it is hard to imagine that Putin would force the very generals who supported his campaign to re-invade Chechnya and managed the first stages of the war—operational responsibility was transferred to the FSB in 2001 and to the MVD in 2003—to implement a reform they oppose. In fact, it has been argued that the second Chechen war became the reason for and the instrument of burying military reform with enthusiastic backing from the top brass.[60]

All of this is certainly not to suggest that Russian presidents have been impotent pawns in the hands of generals. Yeltsin was willing to impose his will on the military on numerous occasions (for example, the army's withdrawal from eastern Europe, the inception and conclusion of the first Chechen war, and the drastic annual budget cuts). Putin has been more careful about antagonizing the armed forces but he, too, has made decisions that did not please the army elite. For instance, he ordered reluctant generals to cooperate with the United States over Afghanistan, stifled their opposition to the U.S. use of central Asian military bases on Russia's periphery, and resisted postponing promised defense sector salary increases when budgetary restrictions so required. Another evidence of presidential prerogative was Putin's long-overdue firing of CGS Anatoliy Kvashnin, who had been at the center of the protracted conflict between the MOD and the GS.

Russian presidents also know that there is no consensus on defense reform, even among the elites supportive of the state's agenda. Therefore, an all-out executive campaign for a drastic makeover of the military establishment might not make for good politics. There are three additional major points connected to the presidency that go a long way toward explaining the absence of serious defense reform. First, a critically important underlying reason for the military's successful opposition to defense reform is that Russian presidents have not been able to curb the armed forces' institutional independence, the magnitude

[60] Pavel Baev, "The Russian Army and Chechnya" in Cimbala, ed., *The Russian Military into the Twenty-First Century*, 75–96; and Alexander Golts, "Putin and the Chechen War: Together Forever," *Moscow Times*, 11 February 2004.

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of which is unparalleled in democracies.[61] Primarily owing to the fact that in Russian and Soviet society only military officers were able to acquire specialized expertise relating to defense and security issues, members of the officer corps have been able to portray themselves as the monopolists of such know-how for ages. This tradition has changed little in the post-Soviet era, what with the limitations on the media, the intimidation and persecution of those researching "sensitive issues," and the continued aversion to opening up the institution itself to civilians and its dealings to public inspection. Second, as Golts and Tonya Putnam note, there is a traditional deference to the military in Russian culture that dates from well before the Soviet period.[62] Even if the army's prestige has been considerably tarnished in the last decade and a half, the traditional reverence toward the institution is still evident. Both Russian presidents, but especially Putin, have frequently paid homage to the armed forces, their history, and their role in the country's successes, and have actually attempted to deepen the age-old societal reverence toward them. Although part of the explanation for the presidents' publicly demonstrated admiration for the armed services might be to counteract young Russians' increasingly lackadaisical view of things military, the army remains the "sacred cow" of state institutions in the minds of many, especially older, citizens.[63] Third, an obvious although often overlooked point is that there are many pressing matters confronting Putin and the Russian government; reforming the armed forces is just one of them. Considering the magnitude of the numerous other challenges Russia faces—a plethora of social ills and economic problems, to say nothing of domestic and international political issues—the delays in the transformation of the military establishment are easier to understand.

In sum, the argument is not that the President and political elites in general could not succeed in getting the army to execute state policy unacceptable to them; it has been done many times before. Rather, the point is that *combined with* other priorities—the dearth of sufficient resources, the imperatives of the second Chechen war, the fact that the military constitutes an important support base for the President, and the institutional autonomy of traditional deference toward the armed forces—defense reform faces a daunting set of obstacles and loses its urgency and privileged spot among the other items on the state's to-do list. The single most important hindrance to military reform, however, is the army's own opposition to it.

[61] In a recent article, Golts and Putnam also identified the military's institutional autonomy as a key explanatory variable. See their "State Militarism and Its Legacies," 123, 144–147.

[62] This is also recognized by Steven Miller in his "Introduction" in Miller and Trenin, eds., *The Russian Military*, 31; and especially by Golts and Putnam, "State Militarism and Its Legacies," 141–155.

[63] Despite all its problems, the army remains one of the most trusted Russian institutions, even if most Russians do not want their relatives to serve in it. See Alexei Levinson, "Neizbivni atribut," *Yezhenedelnyi Zhurnal*, 17 September 2002.

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The MOD, the GS, and Opposition to Defense Reform

The 1996 Defense Law granted the MOD and the GS fundamentally equal status that virtually ensured that they would compete for decision-making authority. In June of 2004, however, in response to the protracted conflict between the two institutions, the Duma modified the Defense Law and formally established the DM and the MOD's superiority over the CGS and the GS. The new version of the Defense Law entrusts the MOD with the administrative and operational command and control of the armed forces. Although the law omits all references to the role of the GS, it may become a research institute or think tank, the "brains of the army" as it were, charged with preparing threat assessments and doctrinal documents for the MOD to review. This was potentially the most important defense-related legislation in the past several years, and it codified the GS's worst-case scenario. "Potentially," because laws passed by a mostly rubber-stamp legislature can mean very little in Russia: they can be open to varying interpretations or rewritten as changing circumstances demand. In any case, it is difficult to envision the GS's loss of command and control functions at the stroke of a pen before an alternative structure is put in place.[64] The fact that until this point, the GS and the CGS were not formally subordinated to the minister and his ministry was a major shortcoming in the legislation that allowed a decade-long destructive feud between the two institutions and their leaders. The protracted conflict between the GS and the MOD has been one of the chief reasons for the poor prospects of substantive military reform.

The armed forces are far from homogeneous: the most important chasm is between the MOD bureaucracy and the GS. But there are other notable cleavages within the military, based on assignment, location, branch/service, and age, as well as rank. Conservative officers have managed to dominate the MOD and the GS largely because they have succeeded in purging the military leadership of independent thinkers. They have been able to oppose or foil state policy, often with impunity, owing to the skill they have developed since the mid-1980s in probing the Kremlin's limits of tolerance. On the other hand, the government has often been willing to cut the generals some slack in order to retain their support, especially if the issue at hand was not weighty enough to warrant an all-out conflict with them.

One of the fundamental differences between the MOD and the GS has to do with Russia's military doctrine. This discord was muted under DM Pavel Grachev (May 1992–July 1996) and his successor, DM Igor Rodionov (July 1996–May 1997), because they saw eye to eye with the GS. A serious rift developed, however, between DM Igor Sergeyev (May 1997–March 2001) and CGS Kvashnin (May 1997–July 2004), which was rooted in their disagreement

[64] See Pavel Felgenhauer, "General Staff in Command?" *Moscow Times*, 15 June 2004.

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over spending priorities and, more broadly, over Russia's defense doctrine and future military stature. Sergeyev, a loyal Yeltsin appointee, wanted to concentrate defense outlays on the strategic nuclear forces (not incidentally, his own branch of service). Kvashnin, on the other hand, had long advocated boosting investment in conventional weapons and maintained that in order to protect its interests, Russia needed a large army capable of waging war anywhere in the world.

By naming Sergey Ivanov as the new DM in March 2001, Putin signaled the elevation of the MOD over the GS. Still, some disputes between the Ministry and the GS had remained, although they became more polite for several reasons. First, Kvashnin and the generals were aware of the close relationship between the President and the DM and were mindful of the risks of antagonizing Ivanov. Second, the new DM had come around to supporting many of the GS's views regarding doctrine and military reform. For instance, as Security Council Secretary, Ivanov approved a cut of 480,000 in the armed forces' manpower in 2000, but three years later, as DM, he stated that force reduction was completed even though hardly any of the personnel cuts had been implemented.[65] Third, unlike Sergeyev, Ivanov has not played favorites among the branches of the armed forces.

Nonetheless, Ivanov did not fully succeed in either consolidating his power over the armed forces or lessening Kvashnin's influence prior to his dismissal. The differences between the two centered mostly on resource allocation and restructuring, and especially on the tempo of defense reform (the DM wanted to expedite action that has been against the interests of the top brass).[66] Putin remained on the sidelines of these quarrels but by the summer of 2004, he apparently had had enough of Kvashnin's persistent defiance, which not only impeded the reforms but also fueled the tension between the MOD and the GS. The June 21–22, 2004 insurgent attack in Ingushetia, which resulted in 97 dead and 105 wounded soldiers and civilians, along with the CGS's sharp public criticisms of the 2005 preliminary defense budgets, served as convenient reasons for Putin to fire him in mid-July.[67] His departure cannot but improve relations between the GS and the MOD, even though his successor, his former first deputy, Yuriy Baluyevskiy, has also been a staunch opponent of defense reform. The new CGS is a pragmatic general, however, and is expected to follow presidential and ministerial directives.

Since 1991, army leaders have often actively contested state policy. The theoretical contributions and historical shifts discussed earlier are useful in

[65] Alexander Golts, "Generals Cling to Cold War Past," *Bangkok Post*, 14 July 2003.

[66] See "Defense Minister Encircled By Generals," *Novaya Gazeta*, 20–22 October 2003; and "Military Brains Ignoring Defence Minister," 26 January 2004, accessed at http://www.gazeta.ru, 12 May 2006.

[67] Charles Gurin, "Observers Wonder How Ingushetia Gunmen Went Undetected," *Eurasia Daily Monitor* (Jamestown Foundation), 25 June 2004, 1.

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understanding why. First, as I noted in my discussion of Desch's theory above, the top brass' perceptions of what constitute internal and external threats to Russia in the post-Cold War world have been quite different from those of political elites. Second, the generals have traditionally viewed foreign affairs as a policy area in which voicing the military's institutional interests was their prerogative—as Stepan and Colton suggested—and have publicly countered a wide array of expected and actual government policies, emboldened by the changes in civil–military relations that started under Gorbachev. They have consistently opposed strengthening strategic relations with the United States and NATO. They resisted the Kremlin's anticipated readiness to abandon Soviet bases in Cuba and Vietnam and to reach a compromise with Japan on the issue of the Kurile Islands and with NATO regarding the Yugoslav crisis in 1998–1999. The MOD has also aggressively promoted its interests in the CIS, manifested, for example, by its delaying the division of the Black Sea fleet with Ukraine and the withdrawal of its troops from the CIS (the exception was its rapid departure from Azerbaijan). The Foreign Ministry has not been the MOD's only nemesis in the government. The high command has also repeatedly clashed with the Ministry of Finance over the latter's ongoing call for decreased military expenditures and occasional refusal to disburse approved funds to the MOD.

No issue has raised the ire of the military elite more than military reform, because it goes against its vital material and political interests. Quite simply, in contemporary Russia, defense reform means, almost by definition, the conversion of the conscript-based military to a contract-based force of volunteer soldiers. Retaining the draft, however, is in the direct interests of the top brass for several reasons. First, generals maintain that only a large standing army is capable of effectively countering Russia's strategic challenges and that only a draft-based army will allow them to call up millions of reservists if necessary. The old Soviet-type strategic thinking is so deeply ingrained in current military elites that they seem incapable of developing the new tactical and operational concepts demanded by the new security environment or of appreciating the changed realities underscoring the perceptions of the civilian leadership. As a recent meeting of the top brass made clear, the generals oppose further size reductions because they still maintain that Russia needs an army to defend the motherland in a potential war against the United States or NATO.[68] Since Russia cannot afford a large *professional* army, it follows that conscription must not only be continued but ought to be expanded (especially in view of dire demographic prospects) by eliminating many of the current deferral options.

Second, high- and middle-ranking officers materially benefit from using the conscripts as a cheap workforce to build their homes or from bartering their

[68] Golts, "Generals Cling to Cold War Past"; and Alexei Nikolski, "One War Is Not Enough!" *Vedomosti*, 3 October 2003.

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labor with local politicians and businessmen for cash, food, coal, or supplies. Third, there is little accountability over the treatment of draftees, who have few avenues for protecting their own interests. Volunteers are harder to bully around; they feel less at the mercy of their commanders and are more willing to pursue their rights to seek redress for their injuries. For these reasons, the GS has consistently supported keeping the two-year conscription term, the expansion of the draft base by the cancellation of most deferrals, and efforts to make alternative service as difficult as possible. Finally, the generals well realize that a volunteer army would necessarily be smaller and would ultimately lead to the trimming of the bloated officer corps.

The military leadership has publicly opposed even the limited reforms recently approved by Putin. In July of 2003, then-first deputy CGS Baluyevskiy, who succeeded Kvashnin a year later, revealed the GS's official recommendation that defense reform be halted. Not unexpectedly, Baluyevskiy and his generals applauded the presidential announcement marking the "conclusion of radical military reform."[69] They must have been equally pleased in February 2005, when DM Ivanov publicly conceded that "it would be impossible for Russia to switch to an all-volunteer military force," that the reduced term of conscription would not start until at least 2008, and that the country "must maintain an army of at least one million men."[70] According to Aleksandr Golts, an eminent Russian security expert, senior military officers will not accept defense reform unless it is forced upon them.[71]

Lapses of Civilian Control

Both Russian presidents have equated civilian control with presidential control. This did not mean, however, that the military leadership necessarily obeyed them. DM Rodionov, for instance, made a habit of openly criticizing the Yeltsin administration's national security policies and refused to subordinate the MOD to civilian control. Even at times when the MOD fully submitted to presidential authority (for example, under Sergeyev) the GS remained the locus of military opposition to state policy. This intra-institutional dichotomy is best explained by the traditional notion that MOD personnel primarily serve political interests, whereas those in the GS are the guardians of the military's own prerogatives.

Although in 2004, the Duma improved this state of affairs by modifying the Defense Law, the principal condition that has allowed military elites to stall

[69] See "Russian General Staff Official Takes Stock of Military Reform," BBC Monitoring of Channel One TV, Moscow, 19 October 2003. See also Yuriy Baluyevskiy, "Ends and Means: Chief of the General Staff on the Military Department's Strategies," *Rossiyskaya Gazeta*, 28 January 2005.

[70] Interfax and RIA Novosti (Moscow), 2 February 2005, reported in "Minister Admits Russia Will Always Need the Draft," RFE/RL, 3 February 2005, 9.

[71] Golts, *Armiya rossii*, 103.

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reform has not changed and is unlikely to change in the foreseeable future: civilian control over the armed forces is not balanced between the executive and the legislature in Russia. The 1993 constitution removed numerous controls until then possessed by Parliament and transferred responsibility for the army to the president. The 1996 Defense Law denied the legislature virtually any checks and balances over national defense policy. The law gave Yeltsin some twenty powers relevant to military matters and reserved only two to the Duma: to write laws and to pass the defense budget. Even these two prerogatives have become less meaningful forms of legislative oversight, however, owing to the shift toward authoritarianism in Putin's Russia.

The legislature's power to oversee military affairs has gradually waned since 1991. The Duma has no effective means at its disposal to study and investigate how disbursed funds are spent. The departure of Yabloko and especially the SPS from the Duma following the 2003 elections foretells further weakening in the legislature's ability and willingness to pressure the President on defense policy. This is all the more troubling because the pool of independent civilian experts on military-security matters so important for democratic civilian control is, by and large, missing in Russia. When NGOs proposed the formation of an expert group for civilian control over the armed forces, deputy DM Kudelina insisted that the "Chamber of Public Accounts, General Prosecutor's Office, and courts check them regularly. There are also inspectorates in the Armed Forces. Why do we need any other controllers?"[72] Kudelina neglected to mention that none of these institutions were independent of the government.

A parallel development has been the unraveling of some of the long-standing institutional standards that governed Soviet civil–military relations. This process actually began in the late 1980s and was chiefly manifested by the breakdown of some basic norms that have long characterized the military's institutional behavior: subordination to civilian authority, no public criticism of the party and state, and implementation of policy. A specific example of this phenomenon on the highest level was CGS Kvashnin's consistent undermining of the MOD's authority, which constituted "audacious challenges to army discipline and to the Defense Minister."[73]

To be sure, one should not assume that Russia could quickly develop the type of civilian oversight mechanisms that prevail in consolidated democracies. Still, there are fundamental problems here that must not be papered over. The elemental norms of democratic civil–military relations (such as the executive and legislative branches' shared obligation to oversee the armed forces) do not hold in any substantive form in contemporary Russia. With the further

[72] "Democracy Is No Good for the Military," *Defense and Security* 140 (November 2001), accessed at http://wps.wm.ru, 15 December 2001.

[73] Vladimir Voronov, "The Secretive Armed Forces," *Novoye Vremya*, 29 September 2002.

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emaciation of the legislature and the growing political elbowroom gained by the President after the 2003 Duma elections and his own reelection in 2004, legislative control over the armed forces is even less likely to develop in the foreseeable future.

Conclusion

To successfully engage the security challenges of the twenty-first century, Russia needs compact, mobile, highly trained, and well-equipped units that can quickly react to the small-scale "soft" security threats it should anticipate in the foreseeable future. The armed forces need to be gradually professionalized and their size reduced to no more than 850,000. Military education and training on all levels should be revised to take account of the recent revolution in the technology of warfare and the massive changes in the strategic environment; to encourage individual initiative, independent thinking, and personal accountability; and to develop a rigorously prepared corps of professional NCOs. The majority of Russians—if opinion polls can be trusted—would support this kind of military reform, though they might balk at its cost.

Notwithstanding the Kremlin's proclamations, however, substantive defense reform has not been implemented and the decline of Russia's armed forces has not been reversed. To be sure, one partial explanation might be that—unlike in central and eastern Europe, where the prospect of NATO membership was a powerful incentive for the governments to undertake meaningful defense reform—no such external pressure has really been applied on Russia. For a number of entirely logical reasons, moreover, it is highly likely that defense reform will not take place in the foreseeable future either. As I have explained, the top brass has fought meaningful reforms tooth and nail, because such reforms are synonymous with its loss of prestige and privileges. Since the Gorbachev era, generals have acquired an autonomous political voice that is entirely incompatible with even the most generous definitions of democratic civil–military relations. To be sure, Russian generals are not concerned about sovereign power issues but, not surprisingly, they have used their clout to protect and further their own corporate interests.

"Successful reform," Larry Diamond writes, "requires a long-term policy vision, driven by political leadership."[74] In contemporary Russia, there is no such long-term foresight, let alone the kind of leadership that would see through a difficult reform process. The state is unwilling to accept the financial sacrifice real military reform entails, is confronted with many other more pressing issues, and is reluctant to antagonize a military leadership that is loath to lose its large army. If public dissatisfaction with the Kremlin's unpopular

[74] Larry Diamond, *Developing Democracy* (Baltimore, MD: Johns Hopkins University Press, 1999), 113.

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policies—such as the ill-prepared pension reform in the winter of 2004–2005—starts to gain expression in widespread demonstrations and the like, it is likely that Putin and his regime will be more dependent on the support of the security-military establishment in the future. Defense reform will also not succeed until military elites recognize that the main threat to Russia's security does not come from the United States or NATO. This, too, is unlikely to happen in the near future.

In sum, the prospects of real military reform in contemporary Russia discourage hope that the country will soon field a modern and effective army. Likewise, there are no signs that would indicate that civil–military relations will soon be put on a democratic footing in the country. More generally, this analysis is in line with the disappointing record of Russia's democratization experience. Several designations—"managed democracy," "controlled democracy," a "bureaucratic-authoritarian regime with a military bureaucracy," "soft authoritarianism," and "stealth authoritarianism"—have been applied to Russia as that experience gradually ground to a halt and then began to reverse itself after 1993. In its 2005 "Freedom in the World" report, Freedom House, the democracy watchdog, downgraded Russia from "partly free" to "not free" status.[75] In virtually all important aspects examined by Freedom House—electoral process, media freedoms, civil society, governance, judicial framework, etc.—conditions in the country have deteriorated in the last decade. Civil–military relations, the shortcomings of which largely explain the absence of defense reform, is only one of these categories.*

[75] Accessed on the website of Freedom House at http://www.freedomhouse.org/research/survey2005.htm, 18 January 2006.

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Airbus and Boeing: Strengths and Limitations of Strong States

JOHN G. FRANCIS
ALEX F. PEVZNER

Over the past three decades, Airbus has emerged as the world's leading manufacturer of large commercial aircraft. The success of Europe's Airbus is dramatic, given that three decades ago, American domination of the large commercial aircraft market outside the Soviet bloc was uncontested. Airbus is now one of the world's remaining two large commercial aircraft manufacturers. Airbus was created by a coalition of European states and firms committed to regaining a European presence in the international large commercial aviation market. By most measures, the rise of Airbus is a striking example of a successful industrial policy that required a sustained multi-state collaboration over a number of decades.

In this paper, we argue that limiting an explanation of Airbus's achievement to the framework of conventional industrial policy, although highly useful, ignores that a necessary condition to the pursuit of a globally competitive commercial aircraft industry is a strong state with the capacity and the commitment to achieve a global position in civil aviation. This paper argues that two distinctive factors were critical to the rise of Airbus. First, a coalition of European states was able to act as though they were a strong state in the creation and implementation of an industrial policy. Second, the United States was cautious and constrained in responding to the Airbus challenge. This caution contributed to the success of the Europeans in securing a major role in the manufacture and sale of commercial aircraft.

The central importance of a strong state in reestablishing the commercial aviation industry through the commitment of resources—both within its borders and outside its borders—was not lost on the Europeans. By the 1960s, European states recognized that their respective national aviation industries

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had dwindled to next to nothing in the world commercial aviation market. Individually, the European states were unable to compete with American firms and their powerful state backer, the American government. This recognition led four leading Western European states to coalesce and form a common industrial policy, a coalition that in time came to work together as a "strong state" to compete with the Americans.

The four-member Airbus consortium was led by France and supported by Germany, with a major role to Britain and a smaller role to Spain. These participating states understood that the development of a large commercial aviation sector was complementary to the manufacture of military aircraft on the part of two of the participating countries (France and the UK). But, more to the point, a large commercial aircraft industry was judged to be emblematic of a global European presence and a commitment to restore a significant European presence in civil aviation. The consortium reorganized and consolidated the state-based European large commercial aviation industry as a transnational industry: Airbus.

In the sections that follow, we explore the uses of industrial policy, the close relationship between the rise of aviation and the actions of North Atlantic states, the effective coalition of European states that worked together to build Airbus globally, and, finally, the muted nature of the American response to the rise of Airbus.

Industrial Policy and the Uses of a Strong State

The assumption that drives industrial policy is that the state can make substantive differences in economic growth by targeting selected sectors for development.[1] The critical challenge to industrial policy is that the state starts out promoting sunrise industries and ends up subsidizing sunset industries. We argue in this section that the development of aviation cannot effectively be separated from the history of a strong state, itself capable of exercising its commitments both domestically and abroad. An understanding of industrial policy helps to clarify the nature of the relationship between the state and its aviation industry, but a knowledge of the relationship between a strong state and aviation is instructive to understanding not only the rise of Airbus but also the muted nature of the American response to its rise.

Traditional industrial policy takes as its premise that economic competitiveness in a global market requires a well-thought-out cooperative strategy

[1] Klaus Stegemann, "Policy Rivalry from Industrial States: What Can We Learn from Models of Strategic Trade Policy?" *International Organization* 43 (Winter 1989): 73–76; William E. Hudson, "The Feasibility of a Comprehensive U.S. Industrial Policy," *Political Science Quarterly* 100 (Autumn 1985): 461–478; Alberto Ades and Rafael Di Tella, "National Champions and Corruption: Some Unpleasant Interventionist Arithmetic," *The Economic Journal* 107 (July 1997): 1023–1042; R.D. Norton, "Industrial Policy and American Renewal," *Journal of Economic Literature* 24 (March 1986): 1–40; Michael Mastanduno, "Do Relative Gains Matter? America's Response to Japanese Industrial Policy," *International Security* 16 (Summer 1991): 83–84.

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between the export sectors and the state to realize the goal of securing or enlarging market share.[2] Industrial policy can, presumably, be achieved via a number of strategies. Implicit within the particular strategy selected are clearly identified goals, well-developed plans to realize these goals, and a grasp of the time and resource commitment needed.[3] Some critics have argued that states often lack the capacity to realize such policies. Other critics challenge the premise that such policies are needed at all.[4]

The form of industrial policy that has captured the most attention is industrial policy as sectoral policy. Its focus is the state's commitment to promote a specific industry's position within the international economy.[5] Gary Becker defined this traditional understanding of industrial policy as government subsidies for the development of specific sectors that "help America [in this case] compete in the global marketplace."[6] Becker's definition is stated simply but goes to the heart of what is often judged to be a critical and controversial component of industrial policy: the decision of the state to aid the advancement of a specific sector of the economy. A recurring issue for both proponents and critics of industrial policy is not only the identification of such an industry—that is, the process of picking a winner—but the understanding of how, once picked, the industry is to be successfully aided in becoming a persuasive competitor in the world market.[7] This question is made all the more challenging when that industry is aviation, an industry that cannot be separated historically from state sponsorship.

There does not appear to be any clear formula that maps out how a state should help a sector secure a strong position in a global market. Nor is there much discussion about how a state protects domestic priorities abroad by securing access to international markets. Some of the components that regularly appear in industrial policy are state assistance in research and development, funds for facilities construction, help in providing a suitable work force, a regulatory climate conducive to the developing sector, resources for marketing, help in building markets for the product at home, and, of course, securing contracts abroad.[8] Some of the assumptions that underlie many of the

[2] Hudson, "The Feasibility of a Comprehensive U.S. Industrial Policy," 463; Paul R. Krugman, *Pop Internationalism* (Cambridge, MA: MIT Press, 1996), 110.

[3] Ibid., 110.

[4] Norton, "Industrial Policy and American Renewal," 34–36.

[5] Ibid., 19.

[6] Gary Becker, "The Myth of Industrial Policy" in Robert Carbaugh, ed., *Inside the Global Economy: A Case Study Reader and Review Guide* (Cincinnati, OH: South-Western Publishing Company, 1995), 69.

[7] Hudson, "The Feasibility of a Comprehensive U.S. Industrial Policy," 465; Richard Beason and David E. Weinstein, "Growth, Economies of Scale, and Targeting in Japan (1955-1990)," *The Review of Economics and Statistics* 78 (May 1996): 286–295; Krugman, *Pop Internationalism*, 139.

[8] John Zysman and Laura Tyson, eds., *American Industry in International Competition: Government Policies and Corporate Strategies* (Ithaca, NY: Cornell University Press, 1983), 21.

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strategies associated with industrial policy have to do with state capacity.[9] The key assumption is that adequate state capacity exists to take action on behalf of the appropriate sector, even when it is at the expense of other sectors.[10] The state's capacity should be sufficient to help the identified sector and ultimately to wield influence abroad on behalf of that sector.

Industrial policy was widely and prescriptively discussed in the early 1980s, both in public policy debates and in the literature on international political economy and related fields. Laura Tyson, former chair of President Bill Clinton's Council of Economic Advisors,[11] and her colleague John Zysman, among others, framed the discussion of industrial policy along these lines: even if the federal government did not articulate a well-developed industrial policy, it had one in any event, because the absence of action was, by default, an industrial policy. This framing of industrial policy reveals a core assumption: that state action or inaction is central to an explanation of why industries succeed or fail in the international market.

During the early 1980s and throughout the decade, France and Japan (in particular) were frequently cited as examples of successful industrial policy. Ezra Vogel and others argued that the Japanese Ministry of International Trade and Industry orchestrated Japan's postwar success.[12] A number of Japanese industries, notably automobiles and electronics, became, within the space of two decades, globally competitive, if not dominant, in their sectors of the economy.[13] These Japanese industries remained powerful forces in the global economy even after the era of rapid growth.[14] During the decades of the 1970s and 1980s, the Japanese economy continued to expand rapidly, whereas the American economy stagnated. But by the mid 1990s, the situation was seemingly reversed, with the Japanese economy stagnating, despite vast expenditures by the Japanese state to stimulate demand.[15]

[9] Dennis P. Quinn and Robert Jacobson, "Industrial Policy through the Restriction of Capital Flows: A Test of Several Claims Made about Industrial Policy," *American Journal of Political Science* 33 (August 1989): 707.

[10] Ibid., 707.

[11] "Selective Realism," *The Economist*, 9 January 1993, 59.

[12] Ezra Vogel, *Comeback* (New York: Simon & Schuster, 1985), 12–25, 63–65; Marie Anchordoguy, "Mastering the Market: Japanese Government Targeting of the Computer Industry," *International Organization* 42 (Summer 1988): 513–543; Chalmers Johnson, *MITI and the Japanese Miracle* (Stanford, CA: Stanford University Press, 1982), 195–197; Glenn R. Fong, "State Strength, Industry Structure, and Industrial Policy: American and Japanese Experiences in Microelectronics," *Comparative Politics* 22 (April 1990): 276; *The Return of the Men from MITI*, *The Economist*, 31 August 1996, 17.

[13] Anchordoguy, "Mastering the Market," 511; Giovanni Dosi, Laura D'Andrea Tyson, and John Zysman, "Trade, Technologies, and Development: A Framework for Discussing Japan" in Chalmers Johnson, Laura D'Andrea Tyson, and John Zysman, eds., *Politics and Productivity, The Real Story of Why Japan Works* (Cambridge, MA: Ballinger, 1989), 33.

[14] Samuel P. Huntington, "Why International Primacy Matters," *International Security* 17 (Spring 1993): 71–76.

[15] Nakatani Iwao, "A World Seen From Japan: A Design for Transforming the Japanese Economy," *Journal of Japanese Studies* 23 (Summer 1997): 399–417.

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Critics of industrial policy began to question the premise that the state could identify national champions without drifting toward support for ailing industries. One study of twentieth-century German economic history suggested that there was a steady trend toward increasing state subsidies to the industrial sector and that increasingly, those subsidies went to sunset industries.[16]

This apparent reversal of fortune, for countries such as Japan and for some European countries that had been celebrated for their skillful use of industrial policy, reinforced American skepticism about the benefits of industrial policy, to the point that the debate was largely shelved. Critics of industrial policy concluded, particularly after the seemingly prolonged stagnation of the Japanese economy that became apparent in the mid 1990s (and continued into the next decade), that the manner in which industrial policy was deployed contributed to the stagnation.[17] They argued that the assumptions that government–business collusion was preferable to market forces and that the state could successfully "pick industrial winners and losers and then subsidize the former" only encouraged corruption, as arguably had been the case in Japan.[18]

By the late 1990s, industrial policy as a proactive state strategy no longer captured the interest of scholars or policymakers to the extent that it had a decade earlier. Positive accounts of the state's role in an economy's growth or decline shifted to assessments of how states promote competition and reduce burdens on export sectors. The judgment that industrial policy may fail more than it may succeed has been voiced by the influential economist Paul Krugman. Krugman offers a cautionary note concerning the limitations of state intervention in industrial development: the industry may become simply the captive of domestic special interests and jeopardize the benefits of free trade.[19] But on both sides of the Atlantic, the negative evaluation of industrial policy did not change the long-standing and strongly supportive relationships between states and their respective commercial aircraft industries, although it did change the context in which this support took place.

The Historical Role of the State in the Development of Civil Aviation

The state has long been involved directly and indirectly in the production and sale of aircraft, particularly large commercial aircraft. But by no means is state

[16] James Foreman-Peck and Giovanni Federico, "European Industrial Policy: An Overview" in James Foreman-Peck and Giovanni Federico, eds., *European Industrial Policy, The Twentieth-Century Experience* (Oxford: Oxford University Press, 1999), 426–458.

[17] Iwao, "A World Seen from Japan," 400; "A Rude Awakening: Gradual Economic Reform Is No Longer Enough," *The Economist*, 27 November 1999.

[18] Robert J. Caldwell, "Commentary: Will Asian Tigers Sink or Soar?" *San Diego Union Tribune*, 12 December 1997.

[19] Paul R. Krugman, "Is Free Trade Passé?" *Journal of Economic Prospective* 1 (Autumn 1987): 131–144.

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commitment alone sufficient for launching and sustaining a large commercial aircraft industry. A number of factors matter in sustaining a large commercial aircraft industry, such as the quality of the product and the health of the international market. Nonetheless, we contend, a strong state capable of securing support for the aircraft industry at home and abroad is a necessary condition for building and sustaining a large commercial aircraft industry.

It is difficult, if not impossible, to isolate the manufacture of large civil aircraft from the role of the state, particularly a strong state that is capable of projecting power successfully outside its borders. There are a number of reasons for this symbiotic relationship. William Diebold, writing at the beginning of the modern campaign for industrial policy in 1980, observed that "The building of ships is antediluvian; the building of aircraft is of the twentieth century. But there are similarities: both activities have to do with security as well as economy; almost everyone wants some capacity in the field, usually more than can be sustained by ordinary commerce ... ."[20] Large commercial aviation markets are characterized by high research investment, high costs of production, and relatively small orders. This combination of factors seems to promote state intervention: an industry that is costly to run and yet is judged to be in the nation's interest, particularly if that nation has the capacities of a strong state.

The U.S. government was active in supporting both military and civilian aviation throughout the course of the twentieth century and continues this support into the twenty-first century. This long-standing pattern of governmental intervention has been the "hallmark of the industry almost since its inception."[21] "Ever since [President Woodrow] Wilson created the National Advisory Committee for Aeronautics in 1915 to review and coordinate all aeronautical research and technology policies ... every president has supported the aviation industry."[22] The U.S. executive agencies and Congress have encouraged the growth of aviation through federal contracts and a variety of other means. U.S. policymakers have established agencies and funds to promote the sale of American aircraft abroad. Perhaps one of the closest connections has been the federal government's commitment to research and development in aviation, overwhelmingly in the military sphere.

The major political events of the twentieth century and the development of aviation, both as a military force and as civilian transportation, are closely intertwined.[23] Major developments in aviation have often come about as a result of state action.[24] This long-standing practice has produced, for both states and commercial aircraft manufacturers, a clear set of expectations that states

[20] William Diebold, Jr., *Industrial Policy as an International Issue* (New York: McGraw-Hill, 1980) 126.

[21] Vicki L. Golich, "Made in America? Sustaining a Competitive Presence in the Commercial Class Aircraft Industry in the 1990s," *The International Executive* 38 (July/August 1996): 465–499.

[22] Ibid., 477.

[23] Vicki L. Golich, "From Competition to Collaboration: The Challenge of Commercial-Class Aircraft Manufacturing," *International Organization* 46 (Autumn 1992): 910.

[24] Ibid., 910.

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will take action on behalf of their national aviation industries to promote growth and to provide protection from foreign competition from time to time.[25]

The possibilities of air warfare became apparent in World War I and were devastatingly realized in World War II.[26] A number of the larger nations became committed to building military air power and began to invest heavily in research and development.[27] The consequences of this investment were often easily transferred to commercial aviation.[28] From the late 1920s on, state interests in aviation extended beyond military applications, notably to the delivery of mail and freight, as well as passenger transportation.[29] In the middle decades of the twentieth century, there were major aviation manufacturing concerns in France, Britain, Germany, and the United States.[30] There was as well some aircraft manufacturing in the Netherlands, Italy, Sweden, and the USSR.[31] Historically, the American aviation industry is in many ways similar to its European counterparts. A close, symbiotic relationship between great power status, national defense, and aviation was forged over the course of the twentieth century.

Aviation is a research-intensive industry. In the United States, expenditures for research and development amounted to 17.5 percent of net sales, a figure exceeded only by the electronics industry. Perhaps more to the point, federal support for aviation from 1945 to 1982 was $104 billion, 75 percent of which was provided by military agencies. Over the same period, private firms contributed 15 percent of the total research expenditures, or about $9 billion. It is generally thought that military research and development has resulted in useful spillovers to the civil aviation industry.[32]

[25] Laura D'Andrea Tyson, *Who's Bashing Whom? Trade Conflict in High-Technology Industries* (Washington DC: Institute for International Economics, 1993), 157.

[26] David Weldon Thornton, *Airbus Industrie: The Politics of an International Industrial Collaboration* (New York: St. Martin's Press, 1995), 23.

[27] Golich, "From Competition to Collaboration," 910–911.

[28] Ibid., 914.

[29] Vicki Golich, Thomas E. Pinelli, and Rebecca O. Barclay, "An Evolution of Large Aircraft in the U.S.—an Overview" in Thomas E. Pinelli et al., eds., *Knowledge Diffusion in the U.S. Aerospace Industry: Managing Knowledge for Competitive Advantage* Part A. (Greenwich, CT: Ablex Publishing Corp., 1997), 8.

[30] Heidi M. Colby et al., eds., *The Changing Structure of the Global Civil Aircraft Industry and Market: Implications for the Competitiveness of the U.S. Industry* (Washington DC: U.S. International Trade Commission, 1998), 2–11. In the late 1940s, nine British firms were producing large civil and military aircraft. Thornton, *Airbus Industrie*, 35. In France, several nationalized aerospace firms were producing aircraft mostly for the national market. Ibid., 51. Through most of the early 1950s, the German industry remained small and divided regionally. Ibid., 63.

[31] Colby et al., eds., *Changing Structure*, 2–18.

[32] Vicki L. Golich and Thomas E. Pinelli, "The Influence of U.S. Public Policy on Large Commercial Aircraft—Innovation, Transportation, and Knowledge Diffusion" in Thomas E. Pinelli et al., eds., *Knowledge Diffusion in the U.S. Aerospace Industry*, 35–83; David C. Mowery, *Alliance Politics and Economics: Multinational Joint Ventures in Commercial Aircraft* (Cambridge, MA: Ballinger, 1987); Charles W. Wessner, ed., *Trends and Challenges in Aerospace Offsets: Proceedings and Papers*, (Washington DC: Board on Science, Technology, and Economic Policy, National Research Council), 1999.

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Subsidies for aircraft research and development have been matched with support for sales of aircraft abroad. Perhaps the best known example is the U.S. Export-Import Bank, often described as the "Boeing Bank."[33] It was created to support the sale of American products abroad where private financing is judged to be unavailable and to level the playing field where foreign subsidies are said to exist. The bank provides favorable financing for overseas airlines who wish to purchase Boeing aircraft. The bank's support is understandable, given the importance of aircraft sales to the American economy. The U.S. trade surplus in transport aircraft (excluding spare parts) was $35 billion from 1985 to 1989. While commercial transport aircraft represented only .3 percent of the U.S. gross national product in 1989, they accounted for 3.4 percent of the value of merchandise exports. The industry exported $39.6 billion worth of goods in 1991.[34] Another significant form of support is the use of presidential pressure. A notable example was President Clinton's visit to China, which was followed by an announcement of a major order for Boeing commercial jets.

The United States Comes to Dominate: The 1960s and 1970s

In the decades that followed World War II, aircraft manufacturing in general and commercial aircraft in particular moved away from Europe toward the United States—and, to a much lesser extent, the Soviet Union.[35] The United States was one of two superpowers as well as the world's leading economy. There seemed to be a close connection between the manufacture of large commercial aircraft and American power.

By the early 1970s, the international commercial aircraft market was dominated by American firms, with Boeing having the largest market share (Table 1).[36] By 1970, sales by American commercial aircraft makers constituted more then 90 percent of all non-Soviet-produced commercial aircraft.[37] The international market in that era did not span the globe but stopped instead at the edge of the Soviet sphere of influence. Within the Soviet Union, eastern Europe, and other markets such as India, Soviet-built passenger aircraft were found in civilian fleets that served these areas. The Soviet Union was at that time the third largest producer of commercial aircraft.[38] The contemporary Russian civil aviation industry is, however, a modest endeavor.

[33] David E. Sanger, "Two Roads to China: Nice, and Not So Nice," *The New York Times*, 9 June 1996.

[34] "Eximbank Aircraft Financing Volume Likely to Stay High, Official Says," *International Trade Reporter*, 8 June 1994.

[35] Thornton, *Airbus Industrie*, 35.

[36] Vicki L. Golich "Resisting Integration: Aerospace National Champions" in Peter Sterk and David Willis, eds., *Shaping Postwar Europe: European Unity and Disunity, 1945-1957* (London: Francis Pinter, 1991), 125.

[37] H. Landis Gabel and Damien Neven, "Boeing v. Airbus" in Olivier Cadot et al., eds., *European Casebook on Industrial and Trade Policy* (New York: Prentice Hall, 1996), 154.

[38] Colby et al., eds., *Changing Structure*, 2–18.

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TABLE 1

*Gross Aircraft Orders 1965–2003**

Year	*Airbus*	*Boeing*	*McDonnell Douglas*	*Lockheed*	*Total*
<1965	—	706	311	—	1,017
1965	—	417	282	—	699
1966	—	379	272	—	651
1967	—	338	130	—	468
1968	—	185	199	102	486
1969	—	156	93	—	249
1970	—	99	66	25	190
1971	10	90	46	6	152
1972	6	170	76	15	267
1973	2	182	108	12	304
1974	6	181	73	26	286
1975	17	117	30	2	166
1976	8	170	54	15	247
1977	25	228	88	5	346
1978	70	489	119	26	704
1979	132	322	94	37	585
1980	32	375	42	12	461
1981	64	223	40	5	332
1982	16	110	142	—	268
1983	6	151	47	—	204
1984	93	173	135	6	407
1985	92	396	133	—	621
1986	171	343	149	—	663
1987	114	362	114	—	590
1988	160	673	310	—	1,143
1989	488	878	228	—	1,594
1990	289	556	192	—	1,037
1991	107	261	38	—	406
1992	135	245	64	—	444
1993	38	248	16	—	302
1994	125	124	22	—	271
1995	106	392	85	—	583
1996	326	719	45	—	1,090
1997	460	551	17	—	1,028
1998	556	614	41	—	1,211
1999	476	392	—	—	868
2000	521	618	—	—	1,139
2001	375	335	—	—	710
2002	300	251	—	—	551
2003	284	240	—	—	524
Total	5,610	13,459	3,901	294	23,264

Source: Jet Information Services, Inc., www.jetinventory.com.

*Gross orders, not adjusted for cancellation.

The original reason that Europeans banded together to take on Boeing through Airbus is a good example of industrial policy in action. Europeans worried that America's big three civil aircraft manufacturers would close down Europe's weak and divided industry. "Boeing, McDonnell Douglas and Lockheed, which withdrew from the civilian side of aircraft manufacturing in

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1981, enjoyed the benefits of a huge home market, which meant their exported aircraft were cheap."[39] Since the 1960s, concern within Europe had grown over the steady diminution of a European presence within the commercial aviation market.[40] Between 1960 and 1967, French and British manufacturers had seen a 50 percent reduction in aircraft deliveries. In contrast, American manufacturers had enjoyed a nearly 50 percent increase in sales of aircraft.[41] In fact, *Flight International* quotes former Airbus president Roger Beteille as saying that "there was no European manufacturer that had ongoing designs or manufacture of an aircraft that could effectively compete worldwide with American products."[42]

The Development of Airbus

In response to what Charles de Gaulle called the "American colonization of the skies," the British and the French joined together in a supersonic program, launching the *Concorde* in 1962.[43] While the *Concorde* was not a picture of economic efficiency, Europeans placed blame for the aircraft's failure solely on the United States, because the American government had restricted landing rights to just sixteen aircraft.[44] Europeans looked upon *Concorde*'s restricted entry into the American market as another example of the American commitment to maintain its domination of the commercial aircraft industry.

In the 1970s, French Prime Minister Jacques Chirac declared, "The Airbus consortium will not be daunted by the Americans who killed off the *Concorde*. ... We will fight any trade war blow-by-blow as the future of the aeronautical industry and their employees is at stake."[45] The decision to challenge American supremacy in commercial aviation grew out of the goal of establishing or reestablishing a European presence in what had long been regarded as a sector that exemplified national power. From its very beginning, a key Airbus objective was to lead the commercial aircraft market.[46] For the French, in particular, Airbus was aimed at strengthening the domestic aerospace industry while challenging U.S. hegemony in the commercial aerospace market.[47]

[39] "Peace in Our Time: Boeing v. Airbus," *The Economist*, 26 July 1997, 59.

[40] Keith Hayward and Vicki L. Golich, "European Approaches to Knowledge Diffusion—Public Policies Affecting Large Commercial Aircraft Research, Development, and Production" in Pinelli et al., eds., *Knowledge Diffusion in the U.S. Aerospace Industry*, 804–805.

[41] Tyson, *Who's Bashing Whom?* 178–179.

[42] "Airbus History," *Flight International*, 29 October 1997, lexis last visited January 2001.

[43] Mark A. Lorell, *Multinational Development of Large Aircraft: The European Experience* (Santa Monica, CA: Rand Corporation, 1980), 48.

[44] Robert Holtz, "New Look at Supersonics," *Aviation Week & Space Technology* 30 (April 1979): 21.

[45] Ibid., 188.

[46] Ian McIntyre, *Dogfight: The Transatlantic Battle Over Airbus* (Westport, CT: Praeger, 1992), 36.

[47] Thornton, *Airbus Industrie,* 72.

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For Europeans, the rise of transnational research and development projects became the preferred means of gaining sufficient resources to compete in global aviation. Aviation firms and several Western European states began to allocate resources for both development and production in what, presumably, continues to be the best strategy for competing with the Americans.

In 1965, the British, French, and German governments launched a collaborative program to evaluate the commercial prospects of a new wide-body large commercial aircraft, later named the A300.[48] Although the British government formally withdrew from the program in 1969, the French and German governments launched the Airbus Industrie, G.I.E. ("AI"), in 1970.[49] Construcciones Aeronauticas S.A. (CASA) of Spain joined AI in 1971. The British withdrawal was, in part, motivated by the profound ambivalence Britain has often felt toward collaboration with other European states. In 1979, Britain reentered the consortium, but under terms more favorable to French and German leadership. British Aerospace became a partner in 1979.

Thus, by 1979, Airbus was made up of aircraft manufacturers from France (Aerospatiale, 37.9 percent), Germany (Daimler-Benz, 37.9 percent), the United Kingdom (British Aerospace, 20 percent), and Spain (CASA, 4.2 percent).[50] At the time of the consortium's formation, the four firms not only had close ties to their respective national governments but were partially owned by them as well.

While Airbus's market gains in the 1970s were marginal, it did manage to enter the U.S. market with the sale of twenty-three A300s to Eastern Airlines in 1976.[51] Throughout the early 1980s, Airbus's market share was not much of a presence in global sales. The consortium's viability as a commercial force seemed at risk. It seemed to some observers that Airbus survived only through the subsidies of the participating consortium members, and even with these subsidies, had limited prospects of overtaking American manufacturers.

Subsidies can be key to understanding the aircraft industry's very nature. The industry is characterized by high technological risks, large development costs, and a steep learning curve.[52] It is important to note that the return on

[48] Thornton, *Airbus Industrie*, 74–75. The collaboration was necessary because each nation had a small domestic market that could only create short production runs, causing European aircraft to be more expensive. The British Plowden Commission observed that the cost of building an airplane in the United States was 10–20 percent lower than in the UK because longer production runs due to a larger market allowed U.S. companies to absorb learning costs more rapidly. John Newhouse, *The Sporty Game* (New York: Knopf, 1982), 124.

[49] Office of Industries, U.S. International Trade Commission, *Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Large Civil Aircraft* (Washington DC: U.S. International Trade Commission, 1993), 2–13.

[50] Ibid., 2–14.

[51] McIntyre, *Dogfight*, 44.

[52] Tyson, *Who's Bashing Whom?* 156.

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investment in the manufacture of aircraft is long-term. It takes about twelve years and anywhere from $6 to $15 billion to get a single aircraft off the ground.[53] Because manufacturers generally launch an entire family of products (with each family consisting of three to five related models) in order to provide airlines with equipment commonality, increased economies of scale, and decreased learning curves, the costs of launching an aircraft increase even further to about $2 billion for each new aircraft family derivative.[54]

The expense and risk of aircraft development and production are illustrated by the experience of both Airbus and Lockheed. In the 1970s, both Lockheed and Airbus introduced new models. Both manufacturers had roughly the same research and development costs in approximately the same time frame.[55] Lockheed sold more planes at the beginning, but after a decade, both firms had sold approximately the same number of planes. Lockheed determined that it had lost $2.5 billion on the L-1011, an average of $10 million per plane (excluding the cost of borrowing money), and as a result, Lockheed ceased production and withdrew from the commercial aircraft market. Meanwhile, Airbus stayed the course and continued to produce the A320.[56]

The consortium of governments aided Airbus via direct financial support and other avenues. A report from the Organization for Economic Cooperation and Development suggests that these European governments played an important role in the development of their respective aerospace industries through financial support, public procurement, and government ownership. Over time, Airbus began to function as an effective unit, although a unit with a long line of credit.[57]

Over the past several decades, Airbus has gradually penetrated two of the largest markets, North America and Europe, as well as other markets, notably Asia (Tables 2 and 3). The sale of aircraft is sensitive to safety considerations, efficiency, and other needs specific to quite sophisticated customers. Over this time period, Airbus developed a reputation for producing a full line of technologically advanced, reliable aircraft. All of this suggests that the competitive focus of the European industrial policy was not lost. There was a powerful clarity in competing with first two and, finally, just one American competitor.

[53] Ibid., 162; "Peace in Our Time"; The high cost of launching an aircraft is explained by the need to integrate and design the many complex systems necessary for flight. Colby et al., eds., *Changing Structure*, 2–4. The cost of launching Airbus's newest aircraft, the A380, is estimated at $11 to $12 billion. "The French Factor," *The Economist*, 24 July 2000.

[54] Office of Industries, *Global Competitiveness*, 4-3. The development costs of Boeing 7E7 will range between $7 and $10 billion. Renae Marle, "Boeing Gets First Order for New Jet," *The Washington Post*, 27 April 2004.

[55] Tyson, *Who's Bashing Whom?* 183.

[56] Walter J. Boyne, *Beyond the Horizons: The Lockheed Story* (New York: St. Martin's Press, 1998), 364–365.

[57] OECD Economic Studies, 15 (Autumn 1990).

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TABLE 2

Aircraft by Region: North America (Selected Airlines)*

	Airbus		Boeing**	
Airline	*Fleet*	*Order*	*Fleet*	*Order*
Aeromexico			72	8
Air Canada	124	13	45	
AirTran	4		75	59
Alaska Airlines			109	2
American	33		669	56
ATA			59	9
America West Airlines	81	20	57	
Continental Airlines			350	59
Delta Air Lines			494	66
Federal Express	89	10	233	
Frontier Airlines	28	31	12	
Jet Blue	57	96		
Mexicana	38	15	10	
Northwest Airlines	149	40	280	
Southwest Airlines			388	126
Spirit Airlines		35	32	
United	147	42	372	1
UPS	34	56	204	
US Airways	112	29	157	
WestJet			46	22
Total	896	387	3,664	408

Source: World Airline Directory, *Flight International*, 16 March/23 March/30 March 2004.

* Selected are those with twenty or more large commercial aircraft.

** *Includes Boeing and McDonnell Douglas Aircraft.*

The combined political influence of the consortium has proved politically persuasive in gaining marketing entry.

It should be observed that the consortium has been able to act as a robust "strong" state both in securing resources within Europe to build Airbus as well as in gaining access to markets both within and outside Europe. In combination, these countries appear to take on certain aspects of a strong state. These members, acting in concert and in possession of a vibrant military aviation industry, were capable of projecting their power abroad both politically and economically, making them capable of shaping the policies of the emerging European Union in relation to the United States. To be sure, it is also the case that orders will not turn into sales unless the aircraft is of sufficient quality that airlines do not perceive a risk in buying from Airbus.

From the early 1980s to the late 1990s, Airbus grew over 1,000 percent. Both its market share and the number of planes sold increased significantly. The significance of Airbus's achievement—and, to a greater extent, if it even represents an achievement—is debatable. Some argue that Airbus grew not only at the expense of its American competitors but also at the expense of profits. Airbus, as suggested earlier, was instructed to secure market share first

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TABLE 3

Aircraft by Region: Europe (Selected Airlines)*

	Airbus		Boeing**	
Airline	*In Fleet*	*On Order*	*In Fleet*	*On Order*
Air Berlin			43	
Air Europa			31	4
Air France	159	37	87	18
Aer Lingus	19	17	11	
Alitalia	45	1	112	2
Austrian Airlines	24	5	7	3
British Airways	60	16	172	
British Midlands	25	4		
EasyJet	1	114	70	3
Finnair	27	2	24	
Hapag-Lloyd	6		29	
Iberia	89	27	61	
Icelandair			14	
KLM		5	98	6
LOT			21	2
Lufthansa	119	27	90	
Malev			20	8
Olympic Airways	7		18	
Ryan Air			70	107
SAS	19	4	108	3
Spainair	16	5	29	
Swiss International	38	7	4	
TAP Air Portugal	38			
Turkish Airlines	12		42	
Virgin Atlantic	15	10	15	
Total	719	281	1,145	156

Source: World Airline Directory, *Flight International*, 16 March/23 March/30 March 2004.

* Selected are those with twenty or more large commercial aircraft.

** Includes Boeing and McDonnell Douglas Aircraft.

and to address profits later. The risk of such a strategy is that to postpone thinking about profits is not to think about them at all. Indeed, there were reports that consortium partners acted to supply parts to Airbus at prices beneficial to the supplier but with little thought as to whether Airbus as a purchaser benefitted.[58] But it would appear that the Airbus consortium kept its attention on the two goals of securing a place on the world market and staying in the global market over the longer run. The first goal required a good deal of support (subsidies) to develop a competitive product. The second goal required strategy to limit subsidies and to improve efficiency if Airbus was to stay in the global market as an effective competitor.

[58] Janet Guyon, "The Sole Competitor: Europe's Airbus, Boeing's Fierce Rival, Has its Own Troubles. The Likely Solution: Run It Like a Business," *Fortune*, 12 January 1998, 102.

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The Airbus consortium stated that at some point they would form a single publicly traded firm.[59] There was, however, skepticism about when this would occur, given that the consortium's intent to coalesce was regularly announced and regularly postponed. There was also considerable doubt as to how this firm would be structured, particularly in light of the French government's separate aerospace industry. Nonetheless, Airbus has emerged as a firm with an identity that is apart from its national sponsors.

The critical next step for Airbus in its extended competition with Boeing is at the large end of the aircraft manufacturing scale. To compete with the 400-seat Boeing 747, Airbus is building its own super jumbo jet, the A380, which will seat 150 more passengers than the Boeing 747.[60] The development of the A380 is estimated to cost around $11 billion.[61] Additionally, Airbus has become competitive in every part of the world, including the fast growing Asian market predicted to become one of the strongest markets for large commercial aircraft, where some argue that Airbus is succeeding in its role as David to Boeing's Goliath.[62]

A European Commission report published on 29 January 2001, called the "2020 Vision," stated that "European Union member states must pool their research resources in the aeronautical sector if European companies such as Airbus Industrie are going to build on their significant recent market gains and overtake [their] U.S. competitor, the Boeing Co."[63] By 2003, Airbus was publicly committed to capturing a larger role in the military aircraft market, both globally and within the United States.[64]

Near the end of his administration, President Clinton warned the Europeans, and Airbus specifically, that building the A380 could lead to a trade war.[65] But there seemed to be little regard for such a threat in Europe. Indeed, the administration's grave warnings highlight the contrast between American rhetoric and the rather understated nature of the American response, which did not take serious steps to translate threats into actions blocking Airbus.

[59] Laurence Zuckerman, "The Jet Wars of the Future; Airbus Prepares to Take On 'The Boeing That Will Be,'" *The New York Times*, 9 July 1999.

[60] Pierre Sparaco, "Europe Embarks on $11-Billion A380 Gamble," *Aviation Week & Space*, 1 January 2001, 22.

[61] Pierre Sparaco, "The Waiting Game," *Aviation Week & Space*, 10 March 2003.

[62] William Love and Wayne Sandholtz, "David and Goliath: Airbus vs. Boeing in Asia" in Vinod K. Aggarwal, ed., *Winning in Asia, European Style* (New York: Palgrave, 2001), 187–224.

[63] "EC Report Urges Pooling of Resources of Member States for Airbus Research," *International Trade Reporter*, 1 February 2001, 198.

[64] John Tagliabue, "Airbus Aiming at the U.S. Military Market," *The New York Times*, 30 September 2003.

[65] "Airbus Launches Jet Project as EU Snubs Clinton Warning," *The Wall Street Journal*, 20 December 2000; Edward Alden and Kevin Done, "Storm Clouds Greet Newest Airbus: The Launch of the A3XX Super-Jumbo Could Trigger a Bitter Transatlantic Trade Dispute," *Financial Times*, 20 December 2000.

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A Complex but Restrained American Reaction to Airbus

In the mid 1970s, the American share of the global market in large commercial aircraft was nearly 90 percent. By the end of the 1990s, it was under 50 percent. The steady and significant erosion of the American share of the international commercial aviation market raises a challenge for a paper that argues for the existence of a strong state as a necessary condition for any sort of sustained and significant participation in the global aviation market. The challenge is that the United States, a very strong state, seemed unwilling or unable to blunt the European Airbus challenge. Successive administrations, from those of Jimmy Carter to George W. Bush, have threatened sanctions if the consortium members and the European Union did not stop providing Airbus with what the United States regarded as unfair support.[66] The Americans have argued repeatedly that without European subsidies and other forms of support, Airbus would not have been able to make inroads into commercial aviation markets around the globe—at the expense of American firms.

Over the past several decades, American complaints and European concerns about these complaints resulted in just one formal agreement, the 1992 accord between the United States and the European Union, which established limits on the subsidies that could be employed in aircraft development.[67] But, as discussed shortly below, the accord is rather general and of limited value, leading analysts such as Steven McGuire to conclude that the rise of Airbus in the context of American–European trade demonstrates the limits of American hegemony.[68]

There is little doubt that American response to the rise of Airbus has been muted or ineffectual, particularly if measured by American manufacturers' loss of market share. The explanation for the nature of the American response, we suggest, lies in the interplay of a number of factors that, taken as a whole, support the argument that a coalition of states can act as a strong state—as a sophisticated actor in international trade. Such a coalition was strengthened as the European Union developed. The European Union is now a cohesive force in international trade and thus able to promote Airbus around the globe.

We propose that the factors that shaped and constrained the American response are as follows: First, the development of the commercial aviation

[66] "Europe Warned by U.S. to Halt Airbus Subsidies," *Seattle Post-Intelligencer*, 1 May 2002; "Clinton Issues Warning Over Airbus," *European Report*, 20 December 2000, No. 2544; "U.S. Vows Duties on EC Imports; Move Escalates Trade Dispute on Subsidies," *The Washington Post*, 1 May 1992.

[67] Agreement Between the Government of the United States of America and the European Economic Community Concerning the Application of the GATT Agreement on Trade in Civil Aircraft On Trade in Large Civil Aircraft," July 17, 1992, accessed on the website of the U.S. Department of Commerce at http://tcc.export.gov/Trade_Agreement/All_Trade_Agreements/exp_002816.asp, 15 October 2006.

[68] Steven McGuire, *Airbus Industrie: Conflict and Cooperation in US-EC Trade Relations* (New York: St. Martin's Press, 1997).

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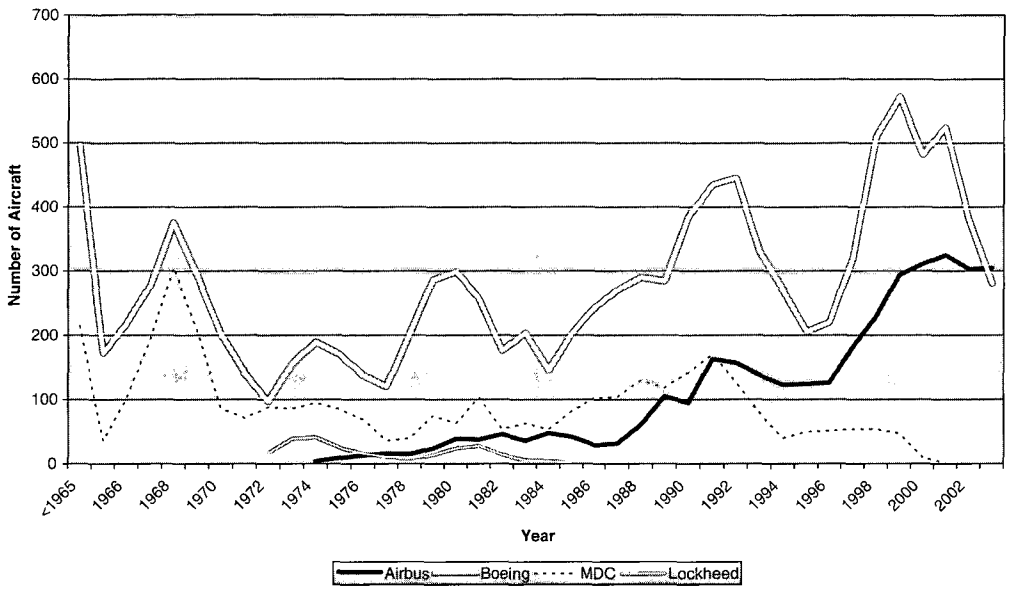
FIGURE 1
Aircraft Deliveries 1965–2003



Source: Jet Information Services, Inc., www.jetinventory.com.

industry is strongly linked to a wide variety of state subsidies and protections; this has been an enduring practice on both sides of the Atlantic. American criticism that the Airbus consortium unfairly subsidizes Airbus is blunted by the fact that the U.S. government has for a very long time subsidized American commercial aircraft manufacturers in similar ways. Second, Airbus moved quickly to penetrate the American market by relying upon American suppliers for major components of the aircraft and by securing orders from American commercial airlines for the expanding Airbus line. In short, Airbus sought to build, through American consumer and supplier networks, domestic support for Airbus in its competition with Boeing. Third, the aircraft manufacturing sector depends heavily upon the international export market. Exporters are acutely aware that if a country tightens rules governing imports, other countries will raise barriers to its exports in kind. This realization can serve—and likely did serve—as a constraint upon the American response to Airbus. Fourth, the elimination of McDonnell Douglas left Boeing as the sole American manufacturer of large commercial aircraft, with a potential monopoly at home and abroad that could possibly generate a serious political problem (Figure 1). Fifth, during much of the time in which Airbus was improving its market share, the global market in commercial aircraft grew at a rate that allowed Boeing to see an absolute increase in orders and deliveries of large commercial aircraft.

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Over the past three decades, commercial aviation has steadily expanded, particularly from the vantage point of Asia and the nations bordering the North Atlantic. Between the 1960s and the 1990s, the commercial world aircraft market grew by nearly 220 percent. In some years, especially during the late 1980s, the aircraft market experienced a drop-off. But with the global expansion of the mid 1990s and the collapse of the Soviet Union opening markets to the East, Boeing sold more aircraft than ever, even with Airbus's steady climb to parity.

When Boeing became the sole U.S. manufacturer of large commercial aircraft, it represented a monopoly for a brief period at home and abroad—until Airbus penetrated both the American market and world markets.[69] The American corporate regulation regime is periodically given to bouts of deep concern over the rise of a single supplier and the threat that such a monopoly could pose to the workings of the marketplace. The challenge to monopolies in the United States has often been the stuff of high political drama, from Standard Oil through AT&T and Microsoft. It is, of course, only speculation, but if for some reason Airbus were to disappear and Boeing were to remain the only supplier of domestic commercial aircraft, the result could be a negative domestic political reaction. Perversely, Airbus today could be viewed as politically useful to Boeing, given that Airbus is a competitor in the American large commercial aircraft market.

But there should be no confusion about the negative reaction that American aircraft manufacturers, American trade officials, and office holders have had about the inroads Airbus has made in global aviation markets. What could be done about the Airbus challenge has been much less clear, given the interplay of domestic and international constraints on both Boeing and American policymakers.

The long-standing complaint directed at Airbus by successive American administrations revolves around the extensive subsidies provided by the consortium for the development of the Airbus line.[70] There are two difficulties with this complaint. First, some of the subsidies apparently provided by the Europeans to European aircraft parts manufacturers have also benefitted American suppliers and airlines based in the United States. And second, as the Europeans have pointed out to several American administrations, the U.S. government has provided indirect subsidies to American aircraft manufacturers, a point we have discussed earlier.

U.S. officials have complained that as much as $3.5 billion of the total $11 billion development cost for the latest addition to the Airbus line, A380,

[69] Eric J. Stock, "Explaining the Differing U.S. and EU Positions on the Boeing/McDonnell-Douglas Merger: Avoiding Another Near-Miss," *University of Pennsylvania Journal of International Economic Law* 20 (Winter 1999): 843.

[70] "The US Aerospace Industry is Facing its Biggest-Ever Challenge and Can no Longer Expect to Survive on a Diet of Massive Federal Spending," *Flight International*, 26 November 2002, 3; "Superjumbo Trade War Ahead," *The Economist*, 6 May 2002.

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will come from government loans.[71] But part of those funds are being spent in the United States. Some observers believe that 40 percent of the A380 components will be manufactured in the United States. For instance, BF Goodrich alone will get $2 billion for the landing gear.[72] In addition, other observers suggest that Airbus has over 800 subcontractors in the United States and has placed orders amounting to $6 billion annually. Airbus argues that the A380 program will create up to 60,000 American jobs.[73] Securing on terms quite favorable to the purchasers a share of the American domestic market gave the consortium American allies, which helped in fending off Boeing and its supporters in Washington.[74]

Airbus aircraft represented 14 percent of the world's total available seat miles (ASM) in 1996, which nearly doubled to 27 percent in 2004. In contrast, Boeing's total world ASM share eroded 15.2 percent during the same period. Ironically, ASMs flown by Airbus planes grew most quickly in the United States, with a 205 percent jump from Airbus's 6.5 percent market share of ASMs in 1996. This still, however, represented less than 20 percent market share in the United States.[75]

Over a number of decades, Congress has sought to facilitate the sale of American-manufactured aircraft abroad, as we described earlier, with the creation of the Export-Import Bank. This so-called Boeing bank has long helped to support aircraft sales abroad.[76]

Although the response of various U.S. administrations to Airbus has often seemed confined more to rhetoric than action, there is no question that it was not long-standing and focused. The complaint concentrated on the extent of support provided by the European consortium to the manufacture of the Airbus line. Starting in 1978, during the Carter administration and around the time that Airbus was negotiating the sale of A300s to Eastern Airlines,

[71] "USA to Step Up Opposition to A380 Launch Aid," *Flight International*, 5 November 2002, 24; Pierre Sparaco, "Europeans Embark On Massive R&D Effort," *Aviation Week & Space Technology*, 18 November 2002, 30.

[72] Alexei Bayer, "Airbus to the Rescue: How Does Airbus Boost the U.S. Economy By Competing with Boeing?" 3 August 2001, accessed on the website of *The Globalist* at wysiwyg:theglobalist.com/nor/richter/2001/08-03-01.shtml, 10 August 2001.

[73] "Airbus Chief Says A380 Will Create 60,000 U.S. Jobs," *Aviation Daily*, 30 April 2001, 2. Emma Kelly, "Lufthansa Closes on A380 Deal," *Flight International*, 2 January 2001, 15. However, some American politicians dispute the number of jobs created by Airbus. Airbus claims that it has as many as 800 suppliers and vendors in the United States, which sustains 100,000 jobs and injects $5 billion a year into the U.S. Economy. Washington Senator Patty Murray, however, argues that the U.S. Commerce Department could not identify more than 250 U.S. firms working with Airbus and could only identify 500 jobs created in the United States by Airbus. Pierre Sparaco, "Walking a Fine Line," *Aviation Week & Space Technology*, 26 May 2003.

[74] Bayer, "Airbus to the Rescue."

[75] Steve Lott, "Airbus Capacity Share Rising, But Boeing Has Lead," *Aviation Week & Space Technology*, 2 May 2005, 40.

[76] Eximbank Aircraft Financing.

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the American aircraft industry and its supporters began raising the issue with Airbus.[77]

By 1987, however, concern over Airbus took on a new dimension, when it became apparent to American manufacturers that Airbus was affecting them at the margin. In the face of small but steady sales to U.S. domestic carriers (often characterized as "innovative"), the industry began to complain more vigorously.[78] Boeing took the lead in voicing concern over the challenge Airbus was mounting to American manufacturers.[79] These concerns culminated in the 1979 General Agreement on Tariffs and Trade (GATT) on Commercial Aircraft, which reduced overall tariff barriers in the industry but did not explicitly prohibit subsidies.[80]

The debate over subsidies resumed and became very contentious in the second Reagan administration. The point of contention was the extent of German support for Airbus. The Reagan administration sent a team to Europe to protest European violations of the GATT. The Europeans, likewise, favored an agreement that opened the American market to Airbus. The agreement preceded a significant increase in aircraft sales on both sides of the Atlantic. For the first and only time over the last several decades, the United States brought a formal complaint under the GATT over a German exchange rate scheme that allowed Germany to provide additional subsidies to Airbus.[81]

In response to American protests, the Europeans were willing to negotiate, partly out of fear that the Airbus dispute would have an adverse affect on transatlantic cooperation on other issues. The commercial success of Airbus had also reduced the level of subsidy needed for Airbus to survive.[82] As a result, an agreement was reached in 1992, the 1992 United States–European Agreement on Trade in Large Civil Aircraft, which limited direct subsidies to 33 percent of aircraft development costs. It also limited indirect subsidies to 3 percent of the turnover of the civil aircraft industry of a party, or 4 percent of the value of a particular manufacturer's civilian sales.[83] Although both sides viewed the accord as preliminary, to be replaced eventually by a multilateral GATT agreement, it appears not to have been in either side's interest to push

[77] McIntyre, *Dogfight*, 82–83.

[78] McGuire, *Airbus Industrie*, 140.

[79] Ibid.

[80] "Agreement on Trade in Civil Aircraft," 6 November 1979, accessed on the website of the World Trade Organization at http://www.wto.org/english/docs_e/legal_e/air-79_e.pdf, 1 January 2003. Signatories included Canada, Egypt, the European Union, Japan, Macau, Norway, Romania, Switzerland, and the United States.

[81] Richard O. Cunningham, "Subsidies to Large Civil Aircraft Production: New WTO Subsidy Rules and Dispute Settlement Mechanism Alter Dynamics of U.S.-E.U. Dispute," *Air & Space Law Journal* 14 (Fall 1999): 4.

[82] McGuire, *Airbus Industrie*, 144.

[83] Agreement on Trade in Civil Aircraft; Daniel I. Fisher, "'Super Jumbo' Problem: Boeing, Airbus, and the Battle for the Geopolitical Future," *Vanderbilt Journal of Transnational Law* 35 (May 2002): 874–875; Cunningham, "Subsidies to Large Civil Aircraft Production," 5.

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for a GATT agreement that applied to commercial aircraft manufacturing.[84] Indeed, the actual mention of aircraft in the final GATT agreement is limited to three footnotes; this has produced considerable ambiguity and disagreement as to whether the Uruguay round GATT agreement actually applies to commercial aircraft.[85]

It would appear that both the Americans and the Europeans were disinclined to place the manufacturing of large commercial aircraft for export under increased international scrutiny. Both sides of the Atlantic may have had a shared fear that the complex structure of support and intervention provided to Airbus and Boeing could be at risk if additional explicit agreements were to be negotiated as a part of the GATT. It is likely that both parties saw a greater risk of weakening their respective partnerships with their commercial aircraft industries if they were to opt for a GATT commercial aircraft agreement or seek redress under the existing GATT structure.

Drawing on the work of Helen Milner and others, McGuire concludes that when an important export sector is caught in a trade dispute, the sector will work to reduce tensions and will try to block retaliatory responses from its own government. The sector's fear is that such a response would be likely to result in a loss of market access for its product. We do not challenge the view that export sector manufacturers are prudential actors, but we do claim that they will seek a situation that grants them maximum access abroad while reducing their competitors' access. Such an objective is easier to achieve when competing against a weak rather than a strong state.[86]

We argue that the United States, although it recognized that the 1992 accord did relatively little to blunt the steady expansion of Airbus in markets around the globe, did not marshal its frustration into any sort of interest in strengthening the GATT framework as a useful tool for forcing the Europeans to reduce their support for Airbus. GATT—much more so than the accord—could seriously constrain both the European Union and the United States, interfering with support for their respective commercial aircraft industries. The state/private partnership regime that has long governed the large commercial aviation industry on both sides of Atlantic could be at risk if the GATT trade rules were applied to the Boeing/Airbus competition.

[84] Shane Spradlin, "The Aircraft Subsidies Dispute in the GATT's Uruguay Round," *Journal of Air Law & Commerce* 60 (May–June 1995): 1209–1210.

[85] Marc Kleiner, "Bananas, Airplanes and the WTO: Prohibited Export Subsidies," *University of Miami International and Comparative Law Review* 10 (Fall 2002): 136–137.

[86] Helen V. Milner and David B. Yoffie, "Between Free Trade and Protectionism: Strategic Trade Policy and a Theory of Corporate Trade Demands," *International Organization* 43 (Spring 1989): 239–272; Klaus Stegemann, "Policy Rivalry among Industrial States: What Can We Learn from Models of Strategic Trade Policy?" *International Organization* 43 (Winter 1989): 73–100; Paul R. Krugman, "Is Free Trade Passé?" *The Journal of Economic Perspectives* 1 (Autumn 1987): 131–144; Timothy Wendt, "Strategic Trade: Protecting American Economic and Political Interests" *Proceedings of the Academy of Political Science* 37 No. 4; Howard Pack and Kamal Saggi, "Is There a Case for Industrial Policy? A Critical Survey" *World Bank Research Observer* 21 (2006): 267–297.

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The Americans have a complex trading relationship with the Europeans. An important component of this complexity is the size and power of the European trading bloc. In short, the United States lacks both the commitment and possibly the capacity to impose on Europe a trade regime that applies to both competitors. For that matter, Europe may be in a similar position vis-a-vis the United States.

Conclusion

Over the past thirty years, Airbus has greatly extended its product line and its overall market share to more than parity with Boeing. We have argued that the rise of Airbus cannot be understood without recognizing that the manufacture of large commercial aircraft has historically been and continues to be shaped by the industrial policies of strong states, both in realizing its preferences domestically and in exercising influence abroad in world markets. Such a state today must be understood as globally strong. Over the course of the past four decades, policymakers in the major Western European states have become acutely aware, perhaps painfully so, that individual European states can no longer participate in the global large commercial aviation market. The formation of the European consortium in some ways anticipated the emergence of the deepening economic integration of the European Union.

The importance of the strong state thesis is reinforced in the examination of the muted response of the United States to the rise of Airbus. The capacity of the unified Western European states to enter the American market, both in securing suppliers and in the sale of large commercial aircraft, constrained the American response. More to the point, the United States was unable to challenge the Europeans in the World Trade Organization without calling into question its own support for the manufacture of American aircraft. The emergence of a global trade regime over the past several decades excluded the large commercial aviation market, an exclusion supported by both the Americans and the Europeans. When the American large commercial aviation market began to contract, and Americans were losing market share to the Europeans, the United States was unable or unwilling to challenge the Europeans. We submit that the inability of America to maintain dominance in the large commercial aviation market is, in large measure, the result of the Western European achievement of acting as a strong state in this particular global sector.

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AUTHORS' POSTSCRIPT

A number of profound developments have taken place since this article was accepted for publication. Indeed, a year ago, only a few observers would have questioned Airbus's rising dominance in the large commercial aviation industry, and even fewer would have predicted a dramatic reversal in Airbus's global standing. And yet in 2006, for the first time in five years, Airbus has dropped below Boeing in new orders.[87] The falloff in Airbus orders/sales has been dramatic. During the first nine months of 2006, Airbus received just 204 net orders against a record 723 orders for Boeing.[88] EADS shares have lost about a third of their value since June 2006.[89] Many of Airbus's most loyal customers have publicly questioned the design of the A350, Airbus's answer to the Boeing 787, forcing Airbus to redesign the aircraft.[90] One commentator called it "the worst crisis to hit Airbus during the 36 years in which it has slowly evolved from an unwieldy multinational joint venture into something approaching a normal corporate structure."[91]

The crisis at Airbus is in part a function of the delays surrounding the production of the Airbus A380. The setbacks in the production of the 555-passenger jumbo jet, which is two years behind schedule and nearly 5bn Euros over budget, have not only dealt a blow to Airbus's credibility but have also raised significant questions regarding the French–German political alliance that underpins the governance of EADS and Airbus.[92]

Despite the transformation of Airbus from direct government ownership to ownership by EADS, a publicly traded entity, and the current United States action against the European Union in the WTO, the French, German, and Spanish governments have clearly signaled their willingness to continue both exercising control over and subsidizing Airbus. Recently, French President Jacques Chirac and German Chancellor Angela Merkel "pledged to defend their countries' national interests" with regard to a recently announced restructuring plan for Airbus, potentially undermining the plan.[93] Indeed, the German government is considering purchasing a direct stake in Airbus.[94]

Only a few years ago, Boeing was said to be in a state of decline. The large commercial aircraft industry is noted for operating in a changing environment. In this article, we have argued that the combination of high cost and fluctuating markets has contributed to the adoption of industrial policy. What is apparent is the willingness of the French and German states to intervene to reclaim the stronger respective roles they exercised in the past. But what is less clear is whether the policy that brought so much success for Airbus can also sustain it in the longer term.

[87] Tim Hepher and Jason Neely, "Revamped Airbus A350 'Extra-wide Body' Jet," *The Seattle Times*, 18 July 2006, D1.

[88] Kingsley-Jones, "Air Transport," *Flight International*, 17 October 2006.

[89] Doug Cameron, Kevin Done, and Gerhard Hegmann, "Airbus to Lag Boeing for Years," *Financial Times*, 5 October 2006, 1.

[90] Daniel Michaels and J. Lynn Lunsford, "Under Pressure, Airbus Redesigns a Troubled Plane," *The Wall Street Journal*, 14 July 2006, A1.

[91] "Airbus in a Tailspin: It Can Pull Out of Its Dive by Learning a Bit from Boeing," *Financial Times*, 5 October 2006, 18. Holman W. Jenkins, Jr., "It's 1970 Again at Airbus," *The Wall Street Journal*, 18 October 2006, A21.

[92] "Airbus In a Tailspin"; Kevin Done, "Superjet Crisis to Cost EADS over Pounds 3bn," *Financial Times*, 4 October 2006, 1; Dominic Gates, "Airbus' Crisis Looks Like Boeing's in 1997," *The Seattle Times*, 7 October 2006, A1.

[93] Daniel Michaels and David Gauthier-Villars, "European Leaders Weigh In on Airbus's Future," *The Wall Street Journal*, 13 October 2006, A3.

[94] "Airbus in a Tailspin"; "It's 1970 Again at Airbus."

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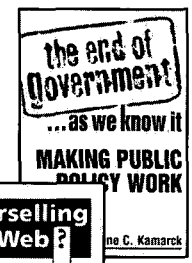

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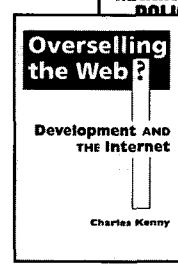

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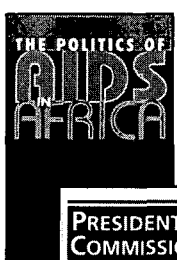

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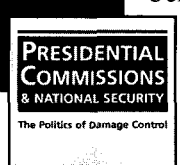

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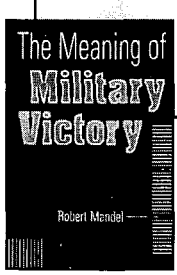

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Presidential Survival and the Impeachment Process: The United States and Colombia

VICTOR J. HINOJOSA
ANÍBAL S. PÉREZ-LIÑÁN

Under what conditions can presidents survive an impeachment process? This question is relevant not only for the study of the American presidency, but also for the comparative study of presidentialism.[1] Different countries have modeled the office of the president following the American Constitution and have included impeachment provisions in their charters. In the current international context that discourages the use of military coups, legislators in new presidential democracies have realized that the impeachment process is the main constitutional tool for sanctioning presidents who are involved in corruption or abuse of power. Congressional leaders throughout the world are thus learning how to use their constitutional powers to hold the president accountable. Impeachment procedures took place in Brazil in 1992, Venezuela in 1993, Colombia in 1996, the United States and Paraguay in 1999, and the Philippines in 2000.[2]

In this paper, we develop a theory of presidential survival in both advanced presidential democracies like the United States and developing countries like Colombia. We focus on the role of presidential rhetoric, public opinion responses, and congressional coalitions. The first section of this paper shows that

[1] In this paper we focus on "pure" presidential systems (for example, the United States and Latin America) and do not deal with semi-presidential regimes like France or Russia. Semi-presidential systems have a distinctive constitutional structure that potentially makes the comparison to the United States less sensible. On the Russian case, see Jody C. Baumgartner, "Impeachment, Russian Style (1998–99)" in Jody C. Baumgartner and Naoko Kada, eds., *Checking Executive Power: Presidential Impeachment in Comparative Perspective* (Westport, CT: Praeger, 2003), 95–112.

[2] Baumgartner and Kada, eds., *Checking Executive Power*.

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the Colombian procedure for impeachment emulates the American Constitution. In the second section, we analyze the nature of the scandals that triggered the accusations against Presidents Ernesto Samper (1994–1998) and William J. Clinton (1992–2000). The third part of the paper traces the evolution of presidential popularity during the two administrations. Section four deals with the congressional politics of impeachment. In the final section, we expand our argument by examining other cases in Latin America or the United States in which, in contrast to those of Samper or Clinton, an impeachment process never took place or the president was removed from office.

Impeachment and Its Consequences

We must first clarify our definition of impeachment and operationalize our dependent variable. By impeachment, we refer to a political trial of the president that is authorized by a legislative body and is typically conducted by a separate political institution (a second chamber, the judiciary, etc.). In the American Constitution, the term *impeachment* refers to a trial initiated by the House of Representatives and conducted by the Senate. Other presidential constitutions have introduced variations on this model, depending on whether the legislature is unicameral or bicameral, and whether the Supreme Court is expected to play a key role in the process. We use the term *impeachment process* to refer to the specific institutional sequence required to authorize and conduct this trial.

Table 1 compares impeachment processes in the western hemisphere. The Table suggests that three basic models of impeachment exist. The first, adopted by most presidential systems, is the American model, in which the lower chamber initiates the accusation and the Senate operates as a jury. The second is the judiciary-dominant model, in which Congress authorizes a trial that is performed by the Supreme Court. The third is the "unicameral" model, in which the same legislative body initiates the accusations and conducts the trial.[3] Although a narrow definition of impeachment refers only to the first procedure described above, we consider the two other variations as functional equivalents of the impeachment process in the United States.

All three models share two important commonalities. First, for impeachment to take place, a high crime or misdemeanor performed by the president must be documented.[4] Second, an adverse congressional vote is necessary—

[3] Naoko Kada, "For Whom is the Whistle Blown? Politics of Impeachment" (paper presented at the Latin American Studies Association, Miami, FL, 16–18 March 2000).

[4] Impeachable offenses in the United States and Colombia are substantively the same. Article II, section 4 of the U.S. constitution specifies "treason, bribery, or other high crimes or misdemeanors" while Article 175 of the Colombian Constitution specifies "political offenses" (official misconduct in office) as impeachable. In addition, because a sitting Colombian president cannot be tried in a regular court for common crimes, the Senate must authorize a trial (to be conducted by the Supreme Court) in such cases.

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TABLE 1

Patterns of Impeachment in the United States and Latin America

	Trial Conducted by[c]		
Accusation Initiated by	*Congress*	*Senate*	*Supreme Court*
Lower chamber	(No cases)	"American" Model United States (1787) Mexico (1917) Chile (1980) Brazil (1988) Colombia (1991) Paraguay (1992) Argentina (1994) Dominican Republic (1994) Uruguay (1997)	(No cases for accusations of high crimes)[a]
Senate	(No cases)	(No cases)	Judiciary-Dominant Model Venezuela (1961)
Joint session	(No cases)	(No cases)	Bolivia (1994) Costa Rica (1949)
Unicameral congress	Unicameral Model Panama (1972) Peru (1993) Ecuador (1998)	(Not possible)	El Salvador (1982)[b] Honduras (1982) Nicaragua (1995) Venezuela (1999)

Sources: Naoko Kada, "Comparative Presidential Impeachment: Conclusions" in Jody Baumgartner and Naoko Kada, eds., *Checking Executive Power: Presidential Impeachment in Comparative Perspective* (Westport, CT: Praeger, 2003), Tables 8-1 and 8-2. Years in parentheses refer to the approval of the constitution.

[a] Brazil and Colombia establish a separate procedure for criminal offenses (as opposed to high crimes and misdemeanors) in which the Supreme Court, rather than the Senate, rules on the trial.

[b] The Salvadorian Constitution establishes that a court of appeals must rule on the trial prior to any appeal to the Supreme Court.

[c] Guatemala's procedure for removal was not specified in the 1985 Constitution.

although in the judiciary-dominant system, not sufficient—for the president to be removed from office. The linkage between presidential misdemeanors or scandals and the legislative process, however, is neither automatic nor obvious.[5] Other things being equal, popular presidents are more capable of enduring accusations, while declining presidential approval typically provides a strong signal for legislators to defect from the president's camp and creates incentives for Congress (and the judiciary) to remove the president from office.[6]

[5] Naoko Kada, "Investigative Committees as an Accountability Check? Lessons from Brazil and Colombia" (paper presented at the XXIII International Congress of the Latin American Studies Association, Washington DC, 6–8 September 2001).

[6] Aníbal Pérez-Liñán, "Public Opinion and Executive Accountability: The Political Economy of Impeachment Crises" (paper read at the XXIII International Congress of the Latin American Studies Association, Washington DC, 6–8 September 2001).

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Accusations against the president may lead to three outcomes: first, impeachment is never seriously considered by congressional leaders; second, the process is initiated but the president is not removed from office; or third, the president is impeached and removed from office (or resigns in anticipation of this outcome). In this paper, we define our main dependent variable—presidential survival—as the process by which members of Congress prevent the ousting of the chief executive on impeachment charges (the second category). This definition implies that Congress addresses the charges but the president survives, either because the House (or its functional equivalent) refuses to proceed with the accusation, or because the Senate acquits the chief executive.

Survival is different from sheer impunity (the first category) or removal from office (the third category).[7] In this context, the term "impunity" is not intended to convey any normative judgment on the responsibility of the president. It simply means that a major scandal takes place, a special prosecutor is appointed to investigate executive behavior, or an impeachment proposal is introduced in the relevant legislative committee, but the accusation is ignored and never reaches the floor. We define "removal" loosely to include instances in which the president resigns anticipating a defeat in Congress. According to this definition, President Richard M. Nixon was "removed" in 1974 even though the actual trial never took place.

Two contemporary presidents match our definition of survival: William J. Clinton and Ernesto Samper of Colombia.[8] Clinton was accused of perjury and obstruction of justice, and ultimately acquitted by the Senate in 1999. Samper was accused of receiving campaign contributions from the Cali drug cartel in 1994.[9] In mid-1996 the Colombian Chamber of Representatives decided that there was not enough evidence against Samper and dropped the charges before they reached the Senate.

The Clinton and Samper cases emerged in different historical contexts and represented dramatically different political configurations. Accusations against President Clinton took place in the context of an advanced presidential democracy with a long-lasting and entrenched democratic culture. The Samper crisis, in contrast, took place in a weakly institutionalized democracy with a long history of political violence. Moreover, while from the outset it appeared that Clinton would survive, the magnitude of the accusations against Presi-

[7] On the concepts of impunity, survival, and exit (punishment), see Jody C. Baumgartner, "Introduction: Comparative Presidential Impeachment" in Baumgartner and Kada, eds., *Checking Executive Power*, 16.

[8] In addition, two American presidents of the nineteenth century also match our definition of survival: John Tyler in 1843 and Andrew Johnson in 1868. See Michael L. Benedict, "A New Look at the Impeachment of Andrew Johnson," *Political Science Quarterly* 88 (Fall 1973): 349–367.

[9] John C. Dugas, "Drugs, Lies, and Audiotape: The Samper Crisis in Colombia," *Latin American Research Review* 36 (June 2001): 157–174.

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dent Samper suggested that removal was imminent. Charges against Clinton were initially based on a domestic scandal (in the sense that there were few public implications and no international repercussions), while the charges against Samper focused on an issue (the drug barons' infiltration into politics) of major domestic and international significance.

Modern presidents in the United States and other presidential democracies are able to survive the threat of impeachment when the accusations are not "politically effective" (followed by a strong decline in presidential approval) and the president is able to preserve a "legislative shield" in Congress. In the following sections, we compare the Clinton and the Samper crises and show that despite the significant differences between the United States (an advanced industrial democracy) and Colombia (a developing country that preserves its democratic institutions amidst high levels of internal violence), both Presidents survived under similar political conditions.[10]

A Tale of Two Scandals

President Clinton and the Lewinsky Scandal

The scandal that led to the impeachment of President Clinton centered on allegations that the President had had a sexual affair with Monica Lewinsky, a twenty-one-year-old White House intern, and then consistently lied about his conduct under oath in court proceedings, suborned perjury by asking others to give false affidavits and testimony, and obstructed justice by arranging a job for Lewinsky in New York and orchestrating the hiding of gifts he had given her (in defiance of a subpoena). The allegations of perjury involved testimony by the President on two separate occasions. The first was in January of 1998, when in a deposition in a sexual harassment lawsuit filed against him by Paula Jones,[11] President Clinton denied a sexual relationship with Lewinsky or even having ever been alone with her. The second allegation of perjury came as

[10] The major differences between the United States and Colombia are not an obstacle for our analysis but rather a methodological advantage. Technically, our comparison of the Clinton and the Samper administrations follows the "method of agreement," which involves the identification of common causes (behavior of independent variables) among cases that share a common outcome (behavior of the dependent variable) but are otherwise very different (with regard to control variables). On the method of agreement, see Charles C. Ragin, *Fuzzy-Set Social Science* (Chicago, IL: The University of Chicago Press, 2000); and Douglas Dion, "Evidence and Inference in the Comparative Case Study," *Comparative Politics* 30 (January 1998): 127–146.

[11] Paula Jones filed a lawsuit in May of 1994 alleging that on 8 May 1991, while she was an employee of the state of Arkansas and Clinton was Governor of Arkansas, Clinton made an unwanted sexual advance toward her. Her lawyers sought to present a pattern of such behavior by President Clinton and thus questioned him about Lewinsky and others they had reason to believe he had been intimate with or had sexually harassed. See Richard A. Posner, *An Affair of State—The Investigation, Impeachment, and Trial of President Clinton* (Cambridge, MA: Harvard University Press, 1999).

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a result of Clinton's testimony before a grand jury in August of 1998 during Independent Counsel Kenneth Starr's investigation of the Lewinsky matter, wherein the President maintained that his earlier testimony had been "legally accurate" but not the entire truth and, while he admitted to an "inappropriate" relationship involving "intimate contact," he continued to deny that the relationship had been "sexual" as defined by the Jones attorneys in the earlier case.

In December of 1998, the U.S. House of Representatives approved two articles of impeachment against President Clinton. He was impeached on one article of perjury before a grand jury and one article of obstruction of justice. The articles made their way to the Senate, where the President was tried and acquitted on both counts, with only the obstruction of justice count garnering fifty votes, far short of the two-thirds majority needed to remove him from office.

President Samper and the Cali Cartel

The crisis that enveloped the presidency of Ernesto Samper centered around allegations that his 1994 presidential campaign had received some six million dollars in funds from the Cali Cartel. In the days before a final runoff election with Andrés Pastrana, the Pastrana campaign received tape-recorded conversations allegedly involving the Samper campaign and representatives of the Cartel arranging the illicit financing. The Pastrana campaign, fearful of being seen as trying to unfairly influence the outcome of the elections, delivered the tapes first to President César Gaviria, whose administration authenticated the tapes but refused to release them, and then to U.S. Ambassador Morris Busby, who likewise feared that the United States would be seen as meddling in Colombian politics and refused to release the cassettes before the election.[12]

Within days of his electoral defeat, Andrés Pastrana leaked the tapes to the Colombian media and the scandal erupted. President Samper's initial defense was to deny the allegations and to portray them as the product of sour grapes on the part of the losing candidate. Samper claimed that the tapes had been altered (President Gaviria's attorney general agreed that they had been edited) and that what they were missing was that the campaign had in fact refused the offers of the cartel for financing. Indeed, Samper claimed that the Cartel had come to them and that the campaign had valiantly refused their overtures.

Although Samper was able to weather the initial storm, the scandal gradually worsened, with more and more revelations from campaign officials. In 1995, campaign treasurer Santiago Medina and campaign manager Fernando Botero, who had been appointed Minister of Defense, were arrested and charged

[12] "The Crack Up," *The Washington Post*, 21 July 1996.

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with accepting illicit funds. The most difficult moment of the crisis came in early 1996, when Botero, in a televised interview from prison, declared that Samper had knowledge of the illicit funds. Samper denied the charges and still maintains his innocence.[13]

The charges against President Samper made their way into the Colombian Congress, but in December of 1995 and in May of 1996, congressional oversight committees voted against charging Samper. In June, the full Colombian House of Representatives voted to clear the President.

A Common Defense

Presidents Clinton and Samper and their respective supporters offered defenses that were strikingly similar in two significant ways. In both cases, the Presidents and their defenders, either overtly or tacitly, offered variations on two rhetorical strategies. The first we might call the "so what?" defense, wherein the Presidents—in this case mostly through their supporters—asserted that while the allegations might well be true, they did not constitute high crimes or misdemeanors and were not grounds for impeachment. For President Clinton, this amounted to asserting that the President's lies involved a sexual affair, that everyone lied about affairs, and that no one was ever prosecuted for perjury about such matters. This case was made most directly and dramatically by former Arkansas Senator Dale Bumpers during his opening statements in the Senate impeachment trial. Speaking in defense of the President, Senator Bumpers argued, "We are here today because the president suffered a terrible moral lapse of marital infidelity—not a breach of the public trust, not a crime against society. It is a sex scandal .... And when you hear people say 'this is not about sex'—it's about sex." He went on to recall his days as a divorce lawyer and guessed that perjury was committed in 80 percent of his cases. His central claim was that people frequently lie about about sex and extramarital affairs, even under oath, and never face charges for such lies.[14]

Further, claimed the President's supporters, if lies about sex are impeachable offenses, many in government are at risk. During the impeachment proceedings, Henry Hyde (R-IL), Chairman of the House Judiciary Committee and leader of the impeachment trial before the Senate, confronted stories about an old affair, and Robert Livingston (R-LA), who had been nominated to replace resigning Speaker of the House Newt Gingrich, resigned his House seat after evidence of his marital infidelity surfaced.

The Samper version of the "so what?" defense was slightly different, in that his denial of involvement in the scandal was more unequivocal—he main-

[13] Ernesto Samper Pizano, *Aquí Estoy y Aquí me Quedo: Testimonio de un Gobierno* (Bogotá: El Ancora Editores, 2000a); Ernesto Samper Pizano, in an interview with the authors, May 2000, Bogotá, Colombia.

[14] Jeffrey Toobin, *A Vast Conspiracy* (New York: Random House, 1999), 380–381.

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tained throughout that he had no knowledge of the illicit funds that made their way into his campaign coffers (although it bears noting that Clinton never admitted to lying under oath or perjury). Samper and his supporters maintained that even if illicit funds had been used by the campaign, this was not an impeachable offense. In part, this involved the tacit admission that the influence of drug money in Colombian politics is well known, widespread, and largely tolerated, at least at the lower levels.[15] More importantly, however, there was never a "smoking gun" that proved Samper's knowledge or approval of the illicit financing of his campaign. This allowed Samper to eventually acknowledge the financing without accepting responsibility for it. In this way, the scandal resembles the Ronald Reagan Iran-Contra scandal (which we discuss below), in that lower-level officials (like Botero and Medina) were tried and imprisoned for their improprieties, whereas Samper escaped sanction. And just as the Clinton scandal led to the embarrassment of other prominent politicians and one significant resignation, the Samper scandal led to similar scandals involving other Colombian politicians, including many congressional representatives who were implicated and faced serious sanctions.

The second rhetorical strategy offered by the Presidents and their supporters was what we might term the "my enemies are out to get me" defense. Both Presidents sought to portray their scandals as highly politicized, brought about by overzealous enemies out to get them at all costs. The Samper scandal was brought about by his rival in the 1994 campaign, a clearly bitter Andrés Pastrana, who appeared to be a "sore loser" in his angry denunciations of Samper in the aftermath of the campaign. Not only had Samper narrowly defeated his Conservative rival, he also had enemies within his own Liberal party, especially among Liberals loyal to former President César Gaviria.[16] John Dugas suggests that Samper and many of his supporters believed in a conspiracy involving members of the media and Liberals loyal to Gaviria and his economic policies.[17] Further, Samper had a major international enemy—the United States—which attempted to use the scandal to assert itself more forcefully in Colombia's drug control efforts (former Bogotá Drug Enforcement Administration chief Joe Toft went on Colombian television, angrily denounced Samper, and claimed that a "narco-democracy" had come to power in the country). Samper was able to use this international opposition to rally a nationalist sentiment on his behalf and to argue that he had but one judge: the *Colombian* Congress.[18]

[15] Alvaro Camacho Guizado, "Narcotráfico, Coyuntura y Crisis: Sugerencias para un Debate" in F. Leal Buitrago, ed., *Tras las Huellas de la Crisis Política* (Bogotá: FESCOL, Tercer Mundo, and IEPRI, 1996), 129–151; Dugas, "Drugs, Lies, and Audiotape," 157–174.

[16] In (separate) interviews with the authors, each former president identified the other as his principal rival within the Liberal party.

[17] Dugas, "Drugs, Lies, and Audiotape."

[18] Roberto Steiner, in an interview with author (Hinojosa), May 2000, Bogotá, Colombia.

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President Clinton's use of this defense was more direct and more personal than that of Samper. In an address to the nation immediately following his testimony before the Starr grand jury, the President attacked the independent counsel, arguing that the questions about his relationship with Lewinsky "were being asked in a politically inspired lawsuit which has since been dismissed" and that after first investigating a land transaction, the investigator "moved on to my staff and friends. Then into my private life. And the investigation itself is now under investigation."[19] Indeed, the President and his supporters portrayed Independent Counsel Starr as "a sex-obsessed Republican zealot."[20] During his cross-examination of Starr during the House Judiciary Committee hearings, Clinton's personal attorney, David Kendall, repeatedly attacked the investigation—and the investigator—for its tactics, but never challenged Starr on the facts of the case.[21] Further, the President attacked his Republican critics in Congress, accusing them of a partisan attempt to overthrow a twice-elected president. Molly Andolina and Clyde Wilcox note the striking difference in the favorability ratings of the principals in the scandal in April of 1998: Clinton at 62 percent, House Speaker Gingrich at 36 percent, Independent Counsel Starr at 22 percent, and Monica Lewinsky at 17 percent.[22] The President exploited these differences to charge that the case against him was political and partisan and that his enemies were out to use the impeachment process to do what they could not do at the ballot box: remove him from office. To the extent that the mass media implicitly reflected this argument by framing the scandal in terms of strategic efforts and motives of conservative elites, the accusations against the President generated a "backlash effect."[23]

We hypothesize that the combination of the "so what?" defense strategy with the claim that "my enemies are out to get me" created a protective shield that sheltered these Presidents in two ways. First, by raising doubts about the political motivations behind the accusations and by arguing that the misdeeds could not be construed as "high crimes and misdemeanors," Clinton and Samper reduced the political impact of the accusations on the electorate.[24] Second, to the extent that public outrage was therefore limited (in the case of Clinton) or at least con-

[19] Toobin, *A Vast Conspiracy*, 319.

[20] John Anthony Maltese, "The Media: The New Media and the Lure of the Clinton Scandal" in M.J. Rozell and C. Wilcox, eds., *The Clinton Scandal and the Future of the American Government* (Washington DC: Georgetown University Press).

[21] Toobin, *A Vast Conspiracy*, 349–351.

[22] Molly W. Andolina and Clyde Wilcox, "Public Opinion: The Paradoxes of Clinton's Popularity" in Rozell and Wilcox, eds., *The Clinton Scandal.*

[23] Dhavan V. Shah, Mark D. Watts, David Domke, and David P. Fan, "News Framing and Cueing of Issue Regimes—Explaining Clinton's Public Approval in Spite of Scandal," *Public Opinion Quarterly* 66 (Fall 2002): 339–370.

[24] Shah, et al., "News Framing and Cueing"; Molly W. Sonner and Clyde Wilcox, "Forgiving and Forgetting: Public Support for Bill Clinton during the Lewinsky Scandal," *PS-Political Science & Politics* 32 (September 1999): 554–557.

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centrated in the upper-middle class (Samper), most members of the Presidents' parties in Congress had strong incentives to remain cohesive in defense of the chief executives.

The Political Effectiveness of the Accusations

In this section, we explore the impact of the accusations on public support for Presidents Samper and Clinton. Following our previous discussion, we emphasize three questions. First, was the president perceived as being guilty by a large segment of the population? Second, was the crime relevant enough to justify an impeachment in the view of most people? And third, to what extent did the accusations actually erode the president's personal political capital over time?

The first and second questions can be addressed by examining the difference between the proportion of people who thought that the president was guilty and the proportion supporting his removal from office.[25] If the accusations were legally weak, we would expect an important segment of the population to simply oppose impeachment. If the charges were technically correct but politically ineffective, we would expect a significant difference between the number of people who accepted that the president broke the law and the number of people who called for his removal. A positive difference would indicate that a segment of the population did not consider the misdemeanor grave enough to justify an impeachment.

Table 2 compares the percentage of citizens who thought the president to be guilty and the percentage of people who supported the removal of the president from office in Colombia and the United States. An ABC News/*Washington Post* poll indicated in December of 1998 that 80 percent of respondents thought that Clinton had lied under oath and 59 percent thought that he had obstructed the investigation of his affair with Lewinsky. Only 38 percent, however, agreed that Congress should impeach Clinton and remove him from office.[26] After Samper proposed a national referendum to overcome the Colombian crisis, in April of 1996, pollsters of the Napoleón Franco y Asociados organization asked whether people would vote in favor of the President's departure from office. Forty-two percent supported this solution, as opposed to 51 percent who said that they preferred that the President remain in office until the end of his term. Yet 60 percent of the interviewees claimed that Samper "lacked credibility," and 54 percent of the respondents interviewed later in May thought the President was guilty.

[25] Patrick J. McGeever, "Guilty Yes; Impeachment, No: Some Empirical Findings," *Political Science Quarterly* 89 (Summer 1974): 289–299.

[26] See Richard Morin and Claudia Deane, "Support for Clinton Has Limits. While Public Still Opposes Impeachment, Resignation Is Favored Over Senate Trial," *The Washington Post*, 15 December 1998. Raw data can be accessed through The Interuniversity Consortium for Political and Social Research (study number 2710).

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TABLE 2

Public Reaction to the Accusations (Percent Respondents)

Administration	*President is Guilty*	*Deserves Removal*	*Difference*
Clinton (December 1998)	59	38	21
Samper (April–May 1996)	54	42	12

Sources: Clinton: ABC News/*Washington Post* poll, national sample, December of 1998. Samper: Napoleón Franco y Asociados, four major cities, April (removal) and May (guilty) of 1996.

It would be a mistake to assume that the public attitude of "guilty yes; impeachment, no"—to use Patrick McGeever's phrase—is common to every impeachment crisis.[27] As we show below, Richard Nixon's credibility following the Watergate scandal was somewhere in between that of Samper and Fernando Collor. In contrast, only a minority considered Reagan guilty in the Iran-Contra affair, and a very small number of respondents believed that he should be removed from office.

Although Table 2 offers a comparative picture of the levels of public support for the presidents in the month prior to impeachment, it provides little information about the dynamics of public outrage.[28] To what extent was the presidents' political capital consumed by the accusations? This third question can be answered by tracing the evolution of presidential favorability before and after the impeachment process. In contrast to presidential approval rates, favorability measures the level of public support for the president as a person, rather than the evaluation of his performance in office. Figure 1 plots favorability rates before and after the House vote on impeachment in Colombia (June of 1996) and the United States (December of 1998). In Colombia, Napoleón Franco asked "Do you have a favorable or unfavorable opinion of President Samper?" (*¿Tiene usted un concepto favorable o desfavorable del presidente Samper?*) In the United States, the Gallup Organization asked: "What is your overall opinion of Bill Clinton—is it favorable or unfavorable (or have you never heard of him)?"[29]

The results suggest that Samper suffered a strong decline in popularity early in his term, when Santiago Medina and, later, Fernando Botero, acknowledged the entry of narco-funds into the presidential campaign. But favorability rates stabilized around 40 percent and remained at that level until the end of the term—a fairly high level of support for any Latin American president. Clinton suffered a milder erosion of his popularity, his favorability rates falling from around 60 percent to 50 percent.

[27] McGeever, "Guilty Yes."

[28] On this criticism, see Gerald B. Finch, "Impeachment and the Dynamics of Public Opinion: A Comment on 'Guilty, Yes; Impeachment, No'," *Political Science Quarterly* 89 (Summer 1974): 301–304.

[29] The Gallup Organization, "Poll Trends. Presidential Ratings—Favorability," September 2001, accessed on the website of *The Gallup Organization* at http://www.gallup.com/poll/trends/Ptfavor_BC.asp, 1 April 2002.

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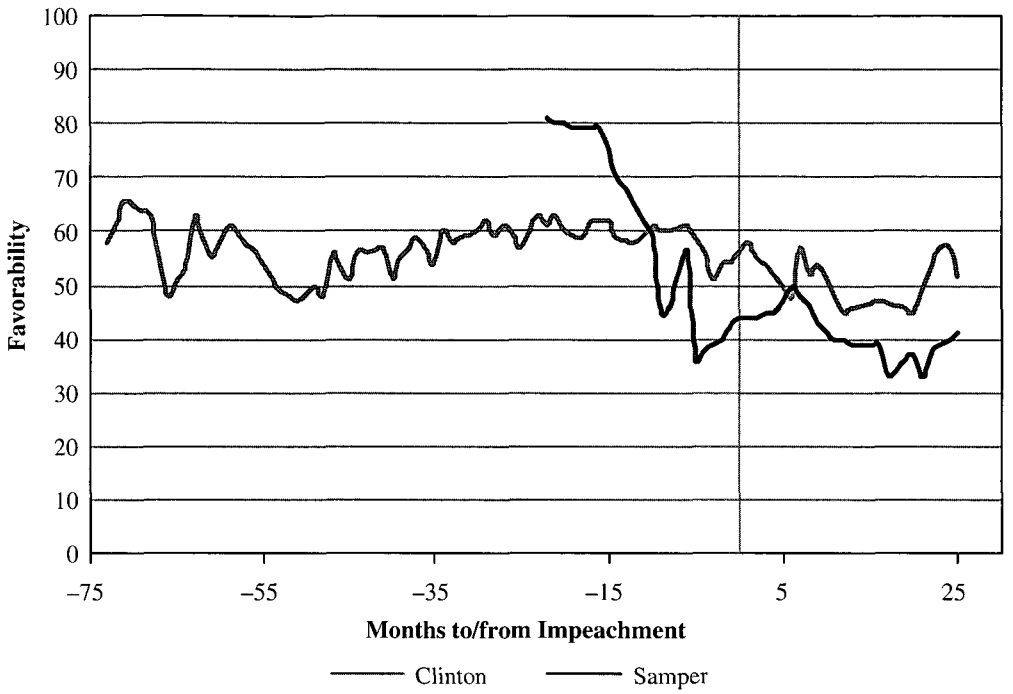
FIGURE 1
Presidential Favorability in Two Cases of Impeachment



Sources: Gallup (U.S.) and Napoleón Franco y Asociados (Colombia).
Note: Ernesto Samper served only one term in office.

Congressional Politics

The previous section opens an important puzzle. Even though the accusations against Samper appeared to be somewhat more effective than those against Clinton, the Colombian Chamber of Representatives ultimately dropped the charges against the President, while the U.S. House voted in favor of an impeachment. Eventually, both Presidents survived in office, but Clinton, who enjoyed greater favorability rates than Samper, also confronted a greater congressional threat. How can we explain this apparent inconsistency?

The simplest answer to this question is that U.S. Democrats did not control a majority of the House, while Colombian Liberals did. This is only part of the explanation, however, because the Samper vote did not just split along partisan lines. Table 3 shows that the Clinton House vote was partisan in nature, while the Samper House vote was only partially so. In the United States, Democrats protected the President, while Republicans pushed for impeachment. In Colombia, in contrast, Liberals aligned with the President, but the Conservatives were divided on the impeachment issue.

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TABLE 3

Support for the President at the House Impeachment Vote

	Samper		*Clinton*	
Support Within	*Percent Opposing Impeachment*	*Of Total Votes (N)*	*Percent Opposing Impeachment*	*Of Total Votes (N)*
President's party	88.9	90	97.6	205
Opposition parties	48.4	64	2.6	229
Total house	72.1	154	47.5	434

Notes: Clinton vote refers to Article 1: perjury in testimony to grand jury. Opposition is broadly defined as any House member not belonging to the president's party.

Two other factors must be taken into consideration to understand this difference. The first is how party systems map political cleavages. Important cleavages emerged in the United States and Colombia during the 1990s, but they were reflected in quite different ways by the two-party system in each country. According to one view, the emergence of the Christian right as a powerful force in U.S. politics encouraged polarization in the party system, as the GOP moved to the right and captured a majority in both houses of Congress in 1994.[30] With conservative Republicans becoming "a majority faction within the majority party," and given the nature of Clinton's behavior, it is not surprising that Republican leaders drove the calls for impeachment four years later.[31] In Colombia, in contrast, conflicts between "modernizing" political reformers and the more traditional politicians represented by Samper mostly took place *within* the Liberal party. Like Clinton, Samper was viewed with distaste by an emerging sociopolitical movement.[32] But unlike Clinton, Samper did not confront an opposition party driven by an ideological core, and the ideological opposition within his party was neutralized by his quite acceptable approval rates.[33]

The second factor refers to the different incentives confronted by strategic legislators in the two countries. In Colombia, it was clear from the outset that the Liberal majority was likely to block any impeachment vote, which encouraged many Conservative representatives to remain on good terms with the President. In addition, the President's ability to allocate pork barrel spend-

[30] Mark J. Rozell and Clyde Wilcox, eds., *God at the Grass Roots—The Christian Right in the 1994 Elections* (Lanham, MD: Rowman and Littlefield, 1995); Clyde Wilcox, *Onward Christian Soldiers? The Religious Right in American Politics* (Boulder, CO: Westview Press, 1996).

[31] Thomas A. Kazee, "The Congress: The Politics of Impeachment" in Rozell and Wilcox, eds., *The Clinton Scandal*, 25.

[32] Juan Manuel López Caballero, *La Conspiración: El Libro Blanco del Juicio al Presidente Samper* (Santafé de Bogotá: Planeta, 1997).

[33] For an exception, see Ingrid Betancourt Pulecio, *Sí Sabía—Viaje a Través del Expediente de Ernesto Samper* (Santa Fe de Bogotá: Ediciones Temas de Hoy, 1996).

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ing, principally through the *Fondos de Cofinanciación* (Co-Financing Funds), provided further incentives for opposition legislators to support Samper. We have previously shown that while the appropriation of these funds did not attract disaffected Liberals, it was a significant factor in encouraging opposition legislators to support the President.[34] This strategic behavior on the part of opposition legislators was only possible in the absence of a strong ideological cleavage.

Republican representatives, on the other hand, operated in a context of "lethal conflict," in which their defection could be presented as a major form of betrayal.[35] The tension between a "partisan core" supporting impeachment and a majority of the population opposing it created important tensions for GOP representatives from moderate districts. But as Cass Sunstein has noted, "The collective action problem was quite serious; without concerted action by a nontrivial number of Republicans, any particular defector would be in potential trouble."[36] In this context, Republican leaders preserved the cohesion of their ranks in the critical votes by allowing them to engage in strategic behavior. The first form of such strategic behavior was to "split the difference," supporting the strongest articles of impeachment but opposing the others.[37] David Lanoue and Craig Emmert, for instance, show that Republicans with safe seats were most likely to defect on Article II (perjury in the Paula Jones lawsuit) and that those coming from districts that supported Clinton were most inclined to defect on Article IV (abuse of power).

The second form of strategic behavior was to support the President's impeachment but not his removal from office.[38] Richard Posner notes that many moderate Republicans voted for the articles of impeachment in the House, and then publicly lobbied the Senate to vote *against* the President's removal from office.[39] They voted for impeachment knowing (indeed, hoping) that it would not result in removal from office. Unless these members of Congress were arguing that there was enough evidence to "indict" but not "convict," this position makes sense only if we assume that they saw the impeachment vote as a kind of censure of the President. In other words, they saw "survival" as a good compromise between impunity (which the partisan core abhorred) and full punishment (which a majority of the public opposed).

[34] Victor J. Hinojosa and Aníbal Pérez-Liñán, "The Samper Crisis in Colombia, 1994–1996" in Baumgartner and Kada, eds., *Checking Executive Power*.

[35] Terry Sullivan, "Impeachment Practice in the Era of Lethal Conflict," *Congress and the Presidency* 25 (Autumn 1998): 117–128.

[36] Cass R. Sunstein, "A Case Study in Group Polarization (with Warnings for the Future)" in L.V. Kaplan and B.I. Moran, eds., *Aftermath—The Clinton Impeachment and the Presidency in the Age of Political Spectacle* (New York: New York University Press, 2001), 18.

[37] David J. Lanoue and Craig F. Emmert, "Voting in the Glare of the Spotlight: Representatives' Votes on the Impeachment of President Clinton," *Polity* 32 (Winter 1999): 253–269.

[38] Kazee, "The Congress," 20–32.

[39] Posner, *An Affair of State*.

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The U.S. Constitution (see Table 1) provided an institutional way of satisfying both the partisan core and the moderate voters by embarrassing the President politically but not actually removing him from office.

It would be a mistake, however, to assume that lower levels of partisan conflict would necessarily protect any president confronting an impeachment. Compared to Clinton, Nixon confronted a less polarized Congress.[40] But lower polarization during the Nixon era actually worked against the executive. Unable to invoke the "so what?" defense or to convincingly claim that "my enemies are out to get me," President Nixon anticipated defections within his own party (we briefly discuss this case below). In contrast, President Samper benefited from low partisan conflict in Colombia because he was able to rely on public support and pork barrel spending to divide the Conservative opposition.[41] Thus, we conclude that low polarization promotes presidential survival only when the chief executive is able to convincingly invoke the two rhetorical strategies outlined in the first section.

Comparative Discussion

In this section, we place the Samper and the Clinton impeachment processes in comparative perspective. We combine brief narratives of four other cases (accusations against the Nixon and the Reagan administrations in the United States, the Menem administration in Argentina, and the Collor administration in Brazil) with ordinal comparative analysis in order to place our analysis of presidential survival in a broader context. In contrast to Clinton and Samper, two of these cases (Reagan and Menem) represent instances of impunity, while the other two (Nixon and Collor) represent instances of punishment.[42]

Our central argument is that the outcome of the accusations against a president is determined by the interaction of public opinion and congressional reactions—the latter being influenced, but not fully determined, by the former. William J. Clinton and Ernesto Samper shared a common pattern in this regard: accusations against them reached moderate levels of political effectiveness (somewhat more effective in the case of Samper than in the case of Clinton), but Congress ultimately remained loyal to the president (less so in the case of Clinton than in the case of Samper).

Presumably, different historical configurations would have led to different outcomes. Politically ineffective accusations investigated by a loyal Congress would have simply generated patterns of impunity. On the other extreme, politically effective accusations in a context of low or declining congressional support would have encouraged the removal of the president from

[40] Sullivan, "Impeachment Practice."

[41] Dugas, "Drugs, Lies, and Audiotape"; Hinojosa and Pérez-Liñán, "The Samper Crisis."

[42] Our dependent categories (for example, "impunity") are strictly analytical and do not assume that presidents were necessarily guilty. James Mahoney, "Nominal, Ordinal, and Narrative Appraisal in Macrocausal Analysis," *American Journal of Sociology* 104 (January 1999): 1154–1196.

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office. In order to explore this argument, we examine four additional cases, two from Latin America and two from the United States.

Richard Nixon, 1974

In June of 1972, five men were arrested while planting eavesdropping devices inside the Democratic Party headquarters in Washington. Three months later, *The Washington Post* revealed that the break-in had been planned by White House officials and by President Nixon's reelection campaign. After Nixon was reelected in November with 61 percent of the vote, the Watergate scandal took on a life of its own. The investigation involved several officials, and in April of 1973, Nixon accepted the resignations of his chief of staff and the attorney general. The new head of the Department of Justice appointed a special prosecutor to investigate the Watergate case, but the President confronted the special prosecutor when he requested the release of tapes documenting conversations inside the White House. In late October of 1973, Nixon fired the special prosecutor and accepted the resignation of the new attorney general in what came to be known as the "Saturday Night Massacre." A few days later, the House Judiciary Committee began to consider the possibility of an impeachment.[43]

As in the cases of Samper and Clinton, there was a significant gap between the percentage of the population that initially considered the President guilty and the percentage who wanted him to be removed from office—but the difference significantly declined over time. In March of 1974, the gap still stood at about 31 points. "Gallup reported in March 1974 that a total of 74 percent of respondents considered Mr. Nixon guilty of planning the Watergate break-in (11 percent), knowing about it in advance (28 percent), or covering it up (34 percent). He also reported that a total of 43 percent of all respondents favored either impeachment or resignation."[44] By early August, the gap had narrowed to 8 percent: 65 percent of respondents thought that there was enough evidence to bring Nixon to trial, while 57 percent supported his removal from office.[45] Overall, President Nixon's approval rates dropped from 39 percent in July of 1973 to 24 percent in July of 1974.[46]

In February of 1973, the Senate voted 70-0 to establish a committee to investigate the Watergate case. The hearings began in May and eventually disclosed the existence of the White House tape-recording system. The ensuing crisis of the tapes and the "Saturday Night Massacre" weakened the position of GOP legislators and created initial support for impeachment

[43] Leonard Garment, *In Search of Deep Throat* (New York: Basic Books, 2000).

[44] McGeever, "Guilty Yes," 298–299.

[45] The Gallup Organization, "Poll Trends. Presidential Ratings—Favorability," 2–5 August 1974, accessed on the website of the Roper Center at http://www.ropercenter.uconn.edu, 1 April 2002. Accession number 0046047.

[46] Gallup Organization, "Poll Trends." Accession numbers 0044800 and 0046033.

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among the Democrats.[47] In February of 1974, the House voted 410-4 to proceed with the impeachment probe. In late July, the House Judiciary Committee voted 27-11 to impeach Nixon on charges of obstruction of justice, 28-10 on abuse of power, and 21-17 for defying the committee's subpoenas. After new information seemed to prove that Nixon had personally ordered a cover-up, the Republicans on the committee announced that they would support the obstruction of justice charges. In a short meeting with Republican congressional leaders on August 7, the President learned that "he had about fifteen votes against conviction in the Senate and perhaps only ten votes against impeachment in the House."[48] The following day, Nixon announced his resignation from office.

Ronald Reagan, 1987

The scandal that enveloped the Reagan administration during the final two years of the second term was the merging of two separate secret operations that became public in October and November of 1986: the selling of arms to Iran in the hopes that the sales would lead to the release of American hostages in Lebanon, and the covert support of the "contra" rebel group opposed to the Sandinista government in Nicaragua. Both operations were secret, counter to U.S. policy, and probably illegal. The Iran arms sales violated U.S. policy on negotiating with hostage-takers and on arms sales to countries sponsoring terrorism, and probably violated U.S. arms control laws.[49] Further, there were specific legislative restrictions (known as the Boland amendments) prohibiting all U.S. aid to the contra rebels from October of 1984 to October of 1985 and a ban on military aid from October of 1985 to October of 1986.[50] Yet it was the merger of these two operations, through the diversion of the profits from the Iranian arms sales to the Nicaraguan contras, that caused the greatest scandal and fears in the administration about possible impeachment.[51]

While there was not a formal impeachment resolution issued by Congress, Independent Counsel Lawrence Walsh was appointed to investigate the allegations of executive impropriety, and both the House and Senate held committee hearings in the summer of 1987. These concluded with the release of the congressional Iran-Contra Report in 1987. The independent counsel

[47] Terry Sullivan, "Domestic Legislative Coalitions and Impeachment" in L. Friedman and W.F. Levantrosser, eds., *Watergate and Afterward—The Legacy of Richard M. Nixon. Papers from the Hofstra Presidential Conference on Richard M. Nixon, Hofstra University, November 19–21, 1987* (Westport, CT: Greenwood Press, 1992); Sullivan, "Impeachment Practice."

[48] Paradoxically, the Democrats' support for impeachment appeared to slightly decline around the same time. See Sullivan, "Domestic Legislative Coalitions"; Sullivan, "Impeachment Practice," 117–128.

[49] Lawrence E. Walsh, *Iran-Contra: The Final Report* (New York: Times Books, 1994).

[50] Richard Sobel, "Contra Aid Fundamentals: Exploring the Intricacies and the Issues," *Political Science Quarterly* 110 (Summer 1995): 287–306.

[51] Walsh, *Iran-Contra,* 463.

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submitted his report to the House and Senate Judiciary Committees in September of 1989, after President Reagan's term in office had expired.

The scandal took a significant toll on the job approval ratings of President Reagan. Data from the Gallup organization show that before the scandal broke, in August of 1986, Reagan's job approval rating was 63 percent and that it fell to 47 percent in December. Using data from a different polling source, Robert Busby has argued that the Iran-Contra scandal led to the largest ever single-month decline in presidential job approval ratings.[52] This decline, coupled with Democratic control of the Congress, might lead us to expect that Reagan would face a more serious sanction, as his advisers initially feared. Two key elements prevented that outcome. Most importantly, despite the independent counsel investigation and the congressional inquiries, a "smoking gun" proving the President's approval or knowledge of the key events was never produced. In the absence of a way to directly tie the President to the actions, blame fell on other members of the executive branch, many of whom were prosecuted (and some convicted) for their crimes.[53] When ABC News and *The Washington Post* asked who was most to blame for the scandal, the President or his advisers, 68.2 percent chose the advisers and only 23.1 percent placed primary blame on the President.[54] Second, while a majority of the public believed the President had not told the truth about the scandal and believed he knew of the events much earlier than he had admitted to, barely a third ever thought the President should "consider resigning."[55] In December of 1986, only 29 percent of the respondents in a Gallup poll called for Reagan's impeachment or resignation, as opposed to 64 percent who said the President should "apologize" or the "matter should be dropped."[56] Those figures remained stable seven months later (see Appendix). By August of 1987, almost 80 percent agreed that it was "time for the country to put the Iran-Contra arms scandal behind us."[57] Thus, the allegations

[52] Robert Busby, *Reagan and The Iran-Contra Affair: The Politics of Presidential Recovery* (New York: St. Martin's Press, 1999).

[53] It is hard to define what "guilty" meant in the Iran-Contra context. By mid-1987, polls indicated that around 52 percent of respondents believed that Oliver North and John Poindexter had received their orders from Reagan, and a similar number thought that the President had lied about this issue. But opinion polls never defined a specific high crime or misdemeanor—which is indicative of the public debate at the time. The best survey question available, reported in Table 4, is "Do you think that Ronald Reagan himself participated in an organized attempt to cover up the facts about the Iran-Contra arms affair or not?" See ABC News/*Washington Post*, accessed on the website of the Roper Center at http://www.ropercenter.uconn.edu, 1 April 2002. Accession number 0006395.

[54] Roper Center question ID number: USABCWASH1987-7191, ABC News/*The Washington Post* 3–5 August 1987.

[55] Busby, *Reagan and the Iran-Contra Affair*.

[56] Gallup-*Newsweek*, "Telephone Poll (national adult sample, N = 865)," 4–5 December 1986, accessed on the website of the Roper Center at http://www.ropercenter.uconn.edu, 1 April 2002. Accession number 0049315.

[57] Data can be accessed through the Roper Center, question ID number: USABC1987-7222, ABC News Poll: Reagan's August 1987 speech, 12 August 1987.

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appeared to the public to be technically correct but politically irrelevant, and the President, even without a congressional majority, was safe.

Fernando Collor, 1992

In May of 1992, Brazilian President Fernando Collor was accused by his brother, Pedro, of leading a broad corruption network. Pedro told the press that Collor's campaign manager, Paulo César Farias (a.k.a. P.C.) had negotiated government contracts with private companies and had shared the "commissions" with the President. In late May, Congress created a joint committee to investigate the case. According to Thomas Skidmore and Peter Smith,

> [Collor's] ... nemesis proved to be the specter he had campaigned against in 1989: corruption. Investigative reporters, a disgruntled presidential brother, and a congressional inquiry furnished proof that Collor was enmeshed in a vast web of bribery orchestrated by an influence peddler called P.C. Farias. Collor turned to television for his defense weapon, but his telegenic skills had worn thin. Public indignation led to a civil campaign for the president's impeachment and removal.[58]

Amaury de Souza has documented the sharp decline in public support for the Brazilian President during this period. In August of 1991, 53 percent of the respondents in the City of São Paulo considered Collor's administration to be "average," "good," or "very good." One year later, the figure had dropped to just 13 percent. In April of 1992, a few weeks before Pedro Collor's interview, a DataFolha survey indicated that only 31 percent of the respondents believed the President to be involved in any acts of corruption. In late August, the number had risen to 84 percent.[59] On 29 September 1992, the chamber of deputies voted 441-38 to impeach Fernando Collor, while more than 100,000 people demonstrated against the President in front of the Congress. The President was temporarily suspended from office, and Vice President Itamar Franco took over as caretaker. Collor formally resigned in December, the day the Senate was going to vote on the charges. In spite of his resignation, the Senate held a trial and banned Collor from public office for eight years.

Carlos Menem, 1997

Our fourth case constitutes a paradigmatic case of impunity. After winning the 1989 presidential election with 47 percent of the vote, Argentine President Carlos Menem introduced a series of ambitious market reforms to cope with social in-

[58] Thomas Skidmore and Peter H. Smith, *Modern Latin America*, 4th ed. (New York: Oxford University Press, 1997), 187.

[59] Amaury de Souza, "Collor's Impeachment and Institutional Reform in Brazil" in K.S. Rosenn and R. Downes, eds., *Corruption and Political Reform in Brazil: The Impact of Collor's Impeachment* (Miami, FL: North-South Center Press, 1999).

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stability and hyperinflation. In early 1991, the administration pegged the Argentine peso to the U.S. dollar, slashing the inflation rate from 2,300 percent in 1990 to 173 percent in 1991, 23 percent in 1992, and 7 percent in 1993.[60] Economic success gave Menem and his Peronist Party increasing levels of public support.[61] At the same time, corruption scandals began to surface in the press. Close collaborators and members of the President's family were accused of involvement in money laundering, influence peddling, interference with other branches of government, corruption in government auctions, illegal traffic in arms and gold, and sales of contaminated milk to social programs, among other misdeeds.[62] Of twenty-four major scandals documented by Ernesto López in Argentina between 1990 and 1999, at least nine involved top officials who were closely related to the President.[63]

As Susan Stokes and John Baughman have shown, after March, 1991—when the Argentine peso was pegged to the U.S. dollar—President Menem's approval rates became highly correlated with public support for his economic plan.[64] In early 1992, approval rates stabilized around 60 percent and slowly declined over the ensuing years. Low inflation levels kept "Menem's approval close to 50% by May 1995, permitting him the plurality support required for reelection."[65] It was not until 1996 that Menem's approval rates gradually approached the 30 percent mark.[66] But even in this context, the strong position of the Peronist Party in Congress prevented any accusation from becoming a serious impeachment threat. Following the 1995 election, the Peronist Party controlled 52 percent of the seats in the Chamber of Deputies and 56 percent of the Senate.[67] When, in early 1997, an opposition deputy called for an impeachment, arguing that 1.3 million dollars had been spent to build an airstrip in the President's home town—which boasted only a thousand inhabitants and the Menems's home—the proposal was simply ignored. To our knowledge, no mass survey asked respondents about the possibility of an impeachment at that time.

[60] Carlos H. Acuña, "Política y Economía en la Argentina de los 90 (O Por Qué el Futuro Ya No Es Lo Que Solía Ser)" in C.H. Acuña, ed., *La Nueva Matriz Política Argentina* (Buenos Aires: Nueva Visión, 1995).

[61] Susan C. Stokes, "Constitutency Influence and Representation," *Electoral Studies* 17 (September 1998): 351–367; Susan C. Stokes, *Mandates and Democracy: Neoliberalism by Surprise in Latin America* (Cambridge: Cambridge University Press, 2001).

[62] Ernesto López, "Democracia y Etica en Argentina: Un Asunto Crucial" in E. López and S. Mainwaring, *Democracia: Discusiones y Nuevas Aproximaciones* (Bernal, Buenos Aires: Universidad Nacional de Quilmes Ediciones, 2000); Silvio Waisbord, "Knocking on Newsroom Doors: Press and Political Scandals in Argentina," *Political Communication* 11 (January–March 1994): 19–33.

[63] López, "Democracia y Etica," 427–436.

[64] Susan C. Stokes and John Baughman, "From Policy Change to Preference Change? Neoliberalism and Public Opinion in Latin America" (paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, 15–17 April 1999).

[65] Ibid., 11.

[66] Kurt Weyland, *The Politics of Market Reform in Fragile Democracies: Argentina, Brazil, Peru, and Venezuela* (Princeton, NJ: Princeton University Press, 2002).

[67] Mark P. Jones, "Evaluating Argentina's Presidential Democracy" in S. Mainwaring and M.S. Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997), 265–266.

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The Appendix provides a structured comparison of the six cases discussed in this paper. Cases are ranked according to three ordinal scales indicating the effectiveness of the accusations, the strength of the legislative shield, and the outcome of the process. We code accusations as being highly effective when a majority of citizens not only blame the president but also demand his removal from office; as moderately effective when there is a gap between a majority who believe that the president may be guilty and a minority who actually support his impeachment; and as minimally effective when a clear minority consider that the president has incurred impeachable offenses.

The fourth column in the Appendix reflects the strength of the legislative shield. We rank congressional support as low when the ruling party does not control enough seats to prevent the president's defeat in any of the chambers; as medium when the party may be unable to stop the accusations in the House but (assuming it remains cohesive) could prevent the president's removal by the Senate; and as high when a loyal presidential majority controls enough votes to prevent the accusation. Although the small number of cases prevents the use of statistical tests, the order of the cases in the Appendix supports our historical interpretation of the Clinton and the Samper impeachments. Survival is characteristic of presidents who confront accusations of moderate effectiveness while enjoying a relatively solid (but not necessarily dominant) position in Congress. In contrast, powerful accusations combined with weak congressional loyalties have led to episodes of removal, while the opposite pattern tends to create situations of impunity.[68]

Conclusion

In this paper, we have examined the survival strategies of Presidents Clinton and Samper in an attempt to understand the broader issue of how modern presidents survive the threat of impeachment. Similarities between these two cases suggest that presidents are most likely to survive when scandals do not result in a strong decline in presidential approval and they can build or maintain a protective shield in the legislature. Our comparative discussion supported this insight. In the first case of impunity, President Reagan overcame the Iran-Contra scandal—even in the absence of a Republican majority—because of the political ineffectiveness of the scandal. The example of Menem in Argentina is somewhat different, in that the presence of a strong legislative shield insulated the President in the face of declining popularity and credible (but ineffective)

[68] Other cases, like the resignation of Paraguayan President Raúl Cubas in 1999 or the congressional declaration of "mental incapacity" against Ecuadorian President Abdalá Bucaram in 1998, tend to confirm our explanation of political survival. We have not discussed those cases because additional factors (the assassination of the vice president in Paraguay and the use of the mental incapacity clause in Ecuador) complicate the comparison with the United States. For more information on these episodes, see Aníbal Pérez-Liñán, "Presidential Crises and Democratic Accountability in Latin America, 1990-1999" in S.E. Eckstein and T.P. Wickham-Crowley, eds., *What Justice? Whose Justice? Fighting for Fairness in Latin America* (Berkeley: University of California Press, 2003), 98–129.

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evidence of corruption. At the other end of the spectrum, cases of removal shared two basic traits: public opinion solidly held that the president was guilty of the conduct of which he was accused, and Congress refused to protect the chief executive. These presidents were unable to survive under such circumstances, and both resigned before the final legislative votes on their fate.

Presidents Clinton and Samper were able to survive relatively effective scandals because their rhetorical strategies allowed them to preserve substantial legislative shields. Both Presidents were able to portray their scandals as politically or ideologically motivated and to convince legislators that even if the allegations against them were true, they did not constitute high crimes or misdemeanors. While the charges against them proved serious enough that impunity was never an option, similar strategies in both cases allowed them to prevent their removal from office.

Our work suggests that the process of presidential impeachment functions similarly in industrial presidential democracies like the United States as well as in developing countries. This finding suggests that after the third wave of democratization, we may observe important similarities in the functioning of presidential institutions across democracies.[69] This in turn has important ramifications for the study of presidential politics. It is already common wisdom among scholars that the study of institutions in new democracies greatly benefits from the use of theories originally developed in the American context. But we anticipate that the study of the U.S. presidency will increasingly benefit from comparisons with other democracies, even those that are less than fully consolidated and in regions that are less economically developed. Comparative work will facilitate the solution of the "small-N" problem in presidential studies and will allow for the development of general theories of executive power.

Bringing these cases into comparative dialogue opens the door to new research and new questions. Clearly, much work remains to be done if we are to fully understand the nature of presidential scandals and how they affect executive–legislative relations. One puzzle that deserves greater empirical analysis is the impact of public opinion on the formation of impeachment coalitions. Congressional action is influenced, but not determined, by public reactions against the executive. What are the mechanisms by which public opinion is transmitted to the legislature? Are different legislatures more or less able to withstand public pressures for or against a president's removal from office? We hope that further research will help us understand this important issue and shed more light on the relationship between public outcry and presidential survival.*

[69] Huntington, Samuel, *The Third Wave* (Norman: University of Oklahoma Press, 1991).

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APPENDIX

A Comparison of Survival Conditions in Latin America and in the United States

Administration (Country, Years)	*Accusations*	*Political Effectiveness*	*Congressional Support*	*Outcome*
Reagan, R. (United States 1980–1988)	Iran-Contra	**L** G, 45 R, 30	**M** H, 42/50 S, 47/34	Impunity
Menem, C.S. (Argentina, 1989–1999)	Several	**L** G, n.d. R, n.d.	**H** H, 51/34 S, 53/34	Impunity
Clinton, W.J. (United States, 1992–2000)	Perjury, Obstruction of Justice	**M** G, 59 R, 38	**M** H, 47/50 S, 45/34	Survival (impeached, acquitted)
Samper, E. (Colombia, 1994–1998)	Campaign finance	**M** G, 54 R, 42	**H** H, 54/50 S, 55/34	Survival (not impeached)
Nixon, R.M. (United States, 1968–1974)	Watergate	**H** G, 65 R, 57	**M** H, 44/50 S, 42/34	Removal (not impeached, resigned)
Collor, F. (Brazil, 1990–1992)	Corruption	**H** G, 63 R, 64	**L** H, 8/34 S, 4/34	Removal (impeached, resigned)

L, low; **M**, medium; **H**, high; G, percentage of poll respondents who considered the president guilty of the charges; R, percentage of poll respondents who agreed that the president should be removed from office; n.d., no data available (coding based on qualitative information); H, percentage of seats controlled by the president's party in the House/percentage constitutionally required to prevent an impeachment; S, percentage of seats controlled by the president's party in the Senate/percentage required to prevent removal from office.

Sources: Public opinion polls: Clinton: ABC News/*Washington Post* poll, national sample, December of 1998. Samper: Napoleón Franco y Asociados, four major cities, April (R) and May (G) of 1996. Collor: IBOPE, national sample, August 1992. Nixon: Gallup Organization, national sample, August 1974. Reagan: ABC News/*Washington Post* (G) and Gallup Organization (R), national samples, July 1987. Congress: U.S. data (Nixon, 1974; Reagan, 1987; Clinton, 1999): U.S. House of Representatives, Office of the Clerk, http://clerk.house.gov/histHigh/Congressional_History/partyDiv.html; U.S. Senate, http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm. Collor, 1992: Scott Mainwaring, "Multipartyism, Robust Federalism, and Presidentialism in Brazil" in S. Mainwaring and M.S. Shugart, eds., *Presidentialism and Democracy in Latin America* (Cambridge: Cambridge University Press, 1997), 72–73. Menem, 1997: N.G. Molinelli, M.V. Palanza, and G. Sin, *Congreso, Presidencia y Justicia en Argentina* (Buenos Aires: Temas Grupo Editorial, 1999), 242–277. Samper, 1996: J. Mark Payne, Daniel Zovatto, Fernando Carrillo Florez, and Andrés Allamand Zavala, *Democracies in Development—Politics and Reform in Latin America* (New York: Inter-American Development Bank, 2002), Appendix 3.

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THE MEANING OF AMERICAN DEMOCRACY

Edited by Robert Y. Shapiro

This volume offers appraisals of democracy, institutions, and rights. A section is devoted to analyzing what has transpired from September 11, 2001 through the subsequent war in Iraq. The book also examines 2004 elections, and concludes with a historical and further normative perspective on current politics and challenges to American democracy.

CONTENTS

PART I: INTRODUCTION

- **The Meaning of American Democracy**
  Robert Y. Shapiro
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PART II: DEMOCRACY, INSTITUTIONS, AND RIGHTS

- **What Political Institutions Does Large-Scale Democracy Require?**
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  Yale University
- **Prescriptions for a New National Democracy**
  Michael Lind
  New America Foundation
- **Shoring Up the Right to Vote for President: A Modest Proposal**
  Alexander Keyssar
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The Canadian Supreme Court: Attitudinal Conflict in Right to Counsel Cases

C.L. OSTBERG
MATTHEW E. WETSTEIN

At a conference commemorating the twentieth anniversary of the Canadian Charter of Rights and Freedoms, Justice Frank Iacobucci informed public law scholars that they needed to devote more attention to exploring the underlying causes of the conflicts that have emerged on the post-Charter Canadian Supreme Court.[1] Although some scholars might argue that the recent discord on the high court can be traced to the passage of the Charter itself, such an assertion fails to adequately explain why current justices take widely varying stances on the merits of legal issues. Indeed, if researchers were to narrow their field of inquiry to cases in a single Charter issue area, surely other factors would emerge as salient in explaining judicial conflict. Clearly, such studies lie at the foundation of developing a more comprehensive understanding of the roots of conflict on the Canadian court. Taking Justice Iacobucci's remarks to heart, this study seeks to explore some of the contours of judicial conflict on the Canadian Supreme Court in the right to counsel area. In doing so, three goals emerge as predominant: first, to assess the impact of an independent indicator of ideological liberalism on the voting behavior of Canadian justices; second, to examine what factual variables are important for justices when resolving right to counsel disputes; and third, to analyze the relative influence that factual circumstances and ideology have on the judicial decision-making process.

[1] Honorable Justice Frank Iacobucci (remarks delivered at a conference commemorating the twentieth anniversary of the Charter of Rights and Freedoms, Association of Canadian Studies, Ottawa, ON, March 2002).

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Taken together, this research seeks to test the validity and relevance of the attitudinal model that dominates the U.S. judicial literature by applying it to an uncharted issue area within a new cultural context.[2]

The theoretical question that drives this study should pique the interest of scholars of public law and comparative politics, because courts around the globe are becoming increasingly politicized and more transparent.[3] It is necessary, therefore, to test the wider applicability of the attitudinal model outside of the United States, because of the potential implications such a model might have for explaining policy making on foreign courts. Simply put, the research question is: does the attitudinal model of judicial decision making represent a valid theoretical approach to explaining the voting behavior of justices in other advanced democracies with a common-law heritage? More specifically, is there empirical evidence to confirm or reject the applicability of this model in the context of Canadian right to counsel disputes? The results of this study will not only enhance our understanding of judicial voting in Canada, but can also provide valuable insight for studies of judicial decision making within the United States as well. Most notably, the outcomes might identify additions and refinements to the attitudinal model that need to be examined in subsequent analyses of right to counsel studies in the United States. Moreover, if the findings are statistically significant, it necessarily moves the theoretical markers of behavioral explanation in the public law field. Yet, it is left to future studies to assess the applicability of the attitudinal model to other more divergent political cultures.

Attitudinal Decision Making by Justices

Most scholars would acknowledge that the attitudinal model of judicial decision making provides one of the most robust explanations of voting behavior on U.S. appellate courts. In essence, attitudinal theorists argue that the ideological preferences of justices are reflected in their voting behavior, and the outward legal trappings of judicial opinions merely mask their own individual policy objectives.[4] Seen in this light, justices are not simply objective arbiters of the law, but rather are perceived as political players who map the legal terrain in a manner that enables them to pursue their own policy goals.

While political ideology has occupied center stage in attitudinal research, some scholars have demonstrated that attitudinal responses to factual circum-

[2] For extended discussions of the attitudinal model, see Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model* (Cambridge: Cambridge University Press, 1993); Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge: Cambridge University Press, 2002).

[3] C. Neal Tate and Torbjorn Vallinder, eds., *The Global Expansion of Judicial Power* (New York: New York University Press, 1995).

[4] Segal and Spaeth, *The Attitudinal Model*, 66–69; Segal and Spaeth *The Attitudinal Model Revisited*, 86–89.

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stances play a pivotal role in explanations of a judge's voting record.[5] These studies have maintained that factual scenarios in a given case might serve as factors that trigger the attitudinal responses that help justices reach a final decision quickly.[6] Jeffrey Segal's analysis of U.S. search and seizure disputes led him to conclude that attitudinal predispositions toward certain facts, along with the ideological leanings of the justices, collectively explain a large percentage of their votes in the search and seizure cases over the last four decades. Similar work on the search and seizure cases of the Canadian Supreme Court revealed that many of the same factual circumstances that proved significant in the U.S. setting were also prominent in Canada in the post-Charter era.[7]

Even though the attitudinal research discussed above generated successful results, only a handful of studies to date in the United States have demonstrated the influence of factual variables on judicial decision making outside the search and seizure area.[8] In Canada, some research has explored the contours of liberal–conservative decision making, but most of this empirical work was conducted at the aggregate level and during the pre-Charter era.[9]

[5] Jeffrey A. Segal, "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-81," *American Political Science Review* 78 (December 1984): 891–900; Jeffrey A. Segal, "Supreme Court Justices as Human Decision Makers: An Individual-Level Analysis of the Search and Seizure Cases," *Journal of Politics* 48 (November 1986): 938–955; Segal and Spaeth, *The Attitudinal Model*, 229–231; Segal and Spaeth, *The Attitudinal Model Revisited*, 316–326.

[6] Segal, "Predicting Supreme Court Cases;" Segal, "Supreme Court Justices"; Segal and Spaeth, *The Attitudinal Model*, 215; Segal and Spaeth, *The Attitudinal Model Revisited*, 319.

[7] Matthew E. Wetstein and C.L. Ostberg, "Search and Seizure Cases in the Supreme Court of Canada: Extending an American Model of Judicial Decision Making across Countries," *Social Science Quarterly* 80 (December 1999): 758–774.

[8] Segal and Spaeth, *The Attitudinal Model Revisited*, 319–320; see Sarah C. Benesh, "Principal Agency in American Courts: Perspectives on the Hierarchy of Justice" (PhD diss., Michigan State University, 1999); Tracy George and Lee Epstein, "On the Nature of Supreme Court Decision Making," *American Political Science Review* 86 (June 1992): 323–337; Timothy M. Hagle, "But Do They Have to See It to Know It? The Supreme Court's Obscenity and Pornography Decisions," *Western Political Quarterly* 44 (December 1992): 1039–1054; Joseph A. Ignani, "Explaining and Predicting Supreme Court Decision Making: The Establishment Clause Cases, 1970-86" (PhD diss., Michigan State University, 1990); Kevin McGuire, "Obscenity, Libertarian Values, and Decision Making in the Supreme Court," *American Politics Quarterly* 18 (1990): 47–67; Jeffrey A. Segal and Cheryl Reedy, "The Supreme Court and Sex Discrimination: The Role of the Solicitor General," *Western Political Quarterly* 41 (September 1988): 553–568; Robin Wolpert, "Explaining and Predicting Supreme Court Decision Making: The Gender Discrimination Cases" (paper delivered at the annual meeting of the Midwest Political Science Association, Chicago, IL, March 1991).

[9] Donald E. Fouts, "Policy Making in the Supreme Court of Canada, 1950-1960" in Glendon Schubert and David Danelski, eds., *Comparative Judicial Behavior* (New York: Oxford University Press, 1969), 257–292; Sidney R. Peck, "A Behavioural Approach to the Judicial Process: Scalogram Analysis," *Osgoode Hall Law Journal* 5 (1967): 1–58; Sidney R. Peck, "The Supreme Court of Canada, 1958-1966: A Search for Policy through Scalogram Analysis," *Canadian Bar Review* 45 (December 1967): 666–725; Sydney R. Peck, "A Scalogram Analysis of the Supreme Court of Canada: 1958-1967" in Schubert and Danelski, eds., *Comparative Judicial Behavior*, 193–234; and C. Neal Tate and Panu Sittiwong, "Decision Making in the Canadian Supreme Court: Extending the Personal Attributes Model Across Nations," *Journal of Politics* 51 (November 1989): 900–916.

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Recent post-Charter empirical scholarship has reexamined the relevance of the social background model of judicial behavior, while other studies have analyzed patterns of granting review on the part of the court.[10] Yet, there has been only one quantitative study to date that has examined the impact of both case facts and judicial ideology in the Canadian context, so further research along these lines is necessary.

There is good reason to believe that the attitudinal model will have theoretical relevance in right to counsel cases in Canada, because there are striking similarities between the constitutional protections in both countries. The right to counsel provision found in the Charter of Rights and Freedoms, like its U.S. counterpart, has been interpreted as providing individuals with counsel protections "at the time of arrest or detention," and with the right to be informed of that right "without delay" (found in section 10b of the Charter). Although the language of the Fifth and Sixth Amendments to the U.S. Constitution is more vaguely stated, courts have interpreted both provisions in a relatively similar manner.[11] Beyond these similarities, justices on both supreme courts work in an environment that sets them apart from electoral accountability, enables them to issue rulings that are beyond higher review, and gives them the freedom to voice their opinions without fear of removal by other political actors. Given the various constitutional, structural, and political similarities found in the two countries, one might reasonably expect that an attitudinal model of judicial decision making that dominates in the United States will also have particular merit in the Canadian context.

Despite the various similarities between the constitutions of the two countries, there are institutional and political factors that suggest that the Canadian attitudinal model may not have the same explanatory power as the U.S. model. First, scholarship on the post-Charter court has shown that Canadian justices continue to hand down a large number of unanimous decisions, suggesting that unlike the U.S. court, a norm of consensus continues to flourish in the Canadian court.[12] Moreover, the Canadian system's strong adherence to parliamentary supremacy may also have implications for the attitudinal model. For much of its history, the court occupied a subordinate

[10] Donald Songer and Susan Johnson, "Attitudinal Decision Making in the Supreme Court of Canada" (paper presented at the annual meeting of the Midwest Political Science Association, Chicago, IL, April 2002); Roy B. Flemming and Glenn S. Krutz, "Selecting Appeals for Judicial Review in Canada: A Replication and Multivariate Test of American Hypotheses," *Journal of Politics* 64 (February 2002): 232–248; and Roy B. Flemming and Glenn S. Krutz, "Repeat Litigators and Agenda Setting on the Supreme Court of Canada," *Canadian Journal of Political Science* 35 (December 2002): 811–833.

[11] For precedential rulings in this area, see *Miranda v. Arizona* 384 U.S. 436 (1966), and *R. v. Therens* [1985] 1 S.C.R. 613.

[12] For data on Canada, see Peter McCormick, *Supreme at Last: The Evolution of the Supreme Court of Canada* (Toronto: James Lorimer, 2000). For evidence on the U.S. Supreme Court, see Lee Epstein, Jeffrey A. Segal, and Harold J. Spaeth, "The Norm of Consensus on the U.S. Supreme Court," *American Journal of Political Science* 45 (April 2001): 362–377.

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role in the political system of Canada, and even when it became the "court of last resort" in 1949, its key rulings focused on umpiring jurisdictional disputes between the national and provincial governments.[13] Unlike its U.S. counterpart, the Canadian court has not had a legacy of making sweeping policy statements through the power of judicial review. Although the addition of the Charter of Rights and Freedoms to the Canadian Constitution gave the court a new mandate of judicial review, and helped move the court in a pro-civil rights and liberties direction, it is a mistake to assume that the court necessarily adopted an American attitudinal model of judicial review.[14] Since the court has a strong tradition of parliamentary deference, and continues to work in a hybrid system of parliamentary supremacy and judicial review, the justices may be more apt to suppress their attitudes and values and defer to the will of Parliament at a far greater rate than would members of the U.S. court.

The naked expression of judicial attitudes on the Supreme Court of Canada is also checked by a "notwithstanding clause" that is built into the text of the Charter of Rights and Freedoms (section 33) and allows the federal and provincial governments to override Charter guarantees found in section 2 and sections 7 to 15. While arguments abound regarding the rationale behind the inclusion of the clause in the Charter, it does represent a formal power that legislative bodies can use to directly curtail and correct seriously flawed rulings handed down by the court.[15] Although this provision has been used infrequently to date, its presence serves as a reminder to justices on the high court that their rulings cannot be too out of step with the will of legislative bodies. Thus, it may reduce the likelihood that justices will follow the whims of their attitudes and values as readily as do their southern counterparts.

Beyond the tradition of parliamentary supremacy and the notwithstanding clause in the text of the Charter, there are historical and cultural differences between the two courts indicating that Canadian justices might also approach criminal cases differently than do their U.S. colleagues.[16] Scholars

[13] Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government* (Toronto: McGraw-Hill Ryerson, 1987), 336–339; Christopher Manfredi, *Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism* (Norman: Oklahoma University Press, 1993), 28–29; Manfredi, *Judicial Power and the Charter*, 2nd ed. (Oxford: Oxford University Press, 2001).

[14] For discussion of the Canadian Supreme Court's activism, see F.L. Morton, "The Political Impact of the Canadian Charter of Rights and Freedoms," *Canadian Journal of Political Science* 20 (March 1987): 31–55; Rainer Knopff and F.L. Morton, *Charter Politics* (Scarborough, ON: Nelson Canada, 1992); F.L. Morton and Rainer Knopff, *The Charter Revolution and the Court Party* (Petersborough, ON: Broadview Press, 2000); F.L. Morton, Peter H. Russell, and Michael J. Withey, "Judging the Judges: The Supreme Court's First 100 Charter Decisions" in Paul W. Fox and Graham White, eds., *Politics: Canada*, 7th ed. (Toronto: McGraw-Hill Ryerson, 1991).

[15] Peter H. Russell, "Standing Up for Notwithstanding" in F.L. Morton, ed., *Law, Politics, and the Judicial Process in Canada*, 2nd ed. (Calgary: University of Calgary Press, 1992), 474–485.

[16] Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* (London: Routledge, 1990); Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York: W.W. Norton, 1996), 92.

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such as Seymour Martin Lipset have argued that for much of Canadian history, Canadians have been far more communitarian, deferential to authority, and supportive of state efforts to curtail freedoms in the name of public safety than are Americans.[17] Evidence of this cultural difference can be found in the Canadian justice system's traditional adherence to a "crime control model" that places heavy emphasis on assembly line justice and the need to move toward conviction as quickly as possible.[18] In contrast, the U.S. system places heavy emphasis on the due process model, which stresses the need for fairness and various procedural safeguards to protect the rights of the criminally accused at all stages of the criminal process.[19] These findings suggest that these two high courts of common-law heritage might have different attitudinal models of decision making when resolving criminal disputes. Collectively, the institutional, political, textual, and cultural features of the Canadian system may serve as mitigating factors that dampen the appearance of the attitudinal model in the Canadian setting.

Although many scholars assume that the attitudinal model has widespread applicability within the United States and in high courts throughout the world, only a smattering of studies have been conducted to date to illustrate the applicability of the model outside the U.S. setting, and no study to date has been conducted in the right to counsel area either in Canada or in the United States. Since an individual's right to counsel is widely viewed as one of the most fundamental procedural due process rights available to citizens in a democratic society, it makes intuitive sense to test the attitudinal model in this critical area of law. It also makes sense from an empirical standpoint, since criminal law disputes have dominated the post-Charter Court docket, with 54 percent of the cases addressing some element of substantive or procedural criminal law. Moreover, since right to counsel cases represent some of the most high-profile Charter disputes to date, they are bound to foster attitudinal conflict among the justices.

Measuring Judicial Ideology

Over the last fifty years, U.S. public law scholars have developed a myriad of measures in an effort to capture the concept of judicial ideology. Initial research on the impact of ideology on judicial decision making used Guttman scaling and factor analysis of the voting in cases to infer that ideology in-

[17] Lipset, *American Exceptionalism*, 92.

[18] Lipset, *Continental Divide*; Morton, "Political Impact of the Canadian Charter"; Morton, Russell, and Withey, "Judging the Judges"; Manfredi, *Judicial Power and the Charter*; Don Stuart, "Four Springboards from the Supreme Court of Canada: *Hunter*, *Therens*, *Motor Vehicle Reference*, and *Oakes*—Asserting Basic Values of Our Criminal Justice System," *Queen's Law Journal* 12 (Spring 1987): 131–154; and Herbert Packer, *The Limits of the Criminal Sanction* (Palo Alto, CA: Stanford University Press, 1968), 158–163.

[19] Packer, *Limits of the Criminal Sanction*, 163–173.

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fluenced the final vote outcomes.[20] Although these efforts to tap ideology were groundbreaking for their day, critics have noted that these attempts suffered from the problem of circular reasoning, in that they used the final votes themselves to demonstrate that judicial attitudes influenced voting behavior.[21] Subsequent scholarship tried to eliminate this circularity problem by developing a measure that would precede the vote of a justice in temporal sequence. One of the most widely used measures of a justice's ideology in recent years has been the party affiliation of the appointing president.[22] The logic behind this approach is that since presidents seek to appoint justices who are like-minded, the party affiliation of the appointing president is a viable surrogate for a nominee's ideology. Although this measure is a convenient indicator of judicial ideology, it remains only a crude indicator, at best, because presidents are unable to determine in advance how justices will vote once they arrive on the court.

Other scholars in the discipline have sought to strengthen the utility of the judicial ideology measure by focusing on various a priori indicators that might do a better a job of determining the ideological leanings of justices. For example, Neal Tate and Roger Handberg developed an indicator aimed at tapping the ideological motivation behind presidential appointments.[23] This is a stronger measure than simply reporting a president's party identification, because some presidents are more ideologically motivated than others. The strength of this measure is that it can identify nuances in the appointment process of presidents from the same political party. One problem with this measure, however, is that if there is no variance in the appointment process by different presidents, the measure can produce scores that are highly correlated with the party identification of the nominating president.

In an effort to tap ideology from another angle, Jeffrey Segal and Albert Cover sought to build an independent ideological indicator of Supreme Court nominees based on content analysis of newspaper editorials in *The New York Times*, *The Washington Post*, the *Chicago Tribune*, and the *Los Angeles Times*.[24] This measure characterized nominees along a liberal–conservative spectrum on civil rights and liberties issues.[25] While the indicator was highly correlated with

[20] C. Hermann Pritchett, "Division of Opinion Among Justices of the U.S. Supreme Court," *American Political Science Review* 35 (October 1941): 890–898; Glendon Schubert, *The Judicial Mind* (Evanston, IL: Northwestern University Press, 1965); Glendon Schubert, *The Judicial Mind Revisited* (New York: Oxford University Press).

[21] Segal and Spaeth, *The Attitudinal Model*, 221–222.

[22] C. Neal Tate and Roger Handberg, "Time Binding and Theory Building in Personal Attribute Models of Supreme Court Voting Behavior," *American Journal of Political Science* 35 (May 1991): 460–480; Stephen Wasby, *The Supreme Court in the Federal Judicial System*, 4th ed. (Chicago, IL: Nelson Hall, 1993).

[23] Tate and Handberg, "Time Binding and Theory Building."

[24] Jeffrey A. Segal and Albert D. Cover, "Ideological Values and the Votes of U.S. Supreme Court Justices," *American Political Science Review* 83 (June 1989): 557–565.

[25] Ibid.; Charles M. Cameron, Albert D. Cover, and Jeffrey A. Segal, "Senate Voting on Supreme Court Nominees: A Neo-Institutional Model," *American Political Science Review* 84 (June 1990):

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subsequent civil rights and liberties votes by U.S. Supreme Court justices, other observers have noted that it has limited utility for predicting votes in other issue areas.[26] Given this limitation, some scholars have developed an a priori measure based on past votes of Supreme Court justices to predict future votes in time.[27] Although seemingly attractive, this approach, as these same scholars have acknowledged, also suffers from circular reasoning problems.[28]

Our effort to develop a comprehensive ideological measure for Canadian justices focuses on three of the four possible measures of ideology discussed above in the Canadian context. They include the party of the prime minister, the ideological motivation of the appointing prime minister, and newspaper ideology scores. The ideology measure based on the party of the prime minister was coded as a dichotomous variable, with Conservative appointees scored as a −1, and Liberal Party nominees scored as +1. Following the logic of Tate and Handberg's prior work, the prime minister motivation score ranged from −1 to +1, and hinged on whether the prime minister was ideologically motivated in his appointments.[29] If he was, the scores were −1 for conservative ideologues and +1 for liberal ideologues. Appointments made by prime ministers who were not politically motivated were scored as 0.[30]

The newspaper ideology score was adapted from prior work and is based on newspaper coverage in the Toronto *Globe and Mail* of the appointee at the time of his/her nomination.[31] Unlike the Segal and Cover measure, this measure is a broader indicator of ideological liberalism because it is based on generalized commentary on a justice's ideology and is not specifically tied to ideological references to civil rights and liberties.[32] Even though only one newspaper was used for calculating this measure, it is widely recognized as the premier newspaper of record in Canada that consistently covers Supreme Court appointments. The coding scheme ranged from −2 for conservatives, to +2 for liberals, while appointees identified as moderates, or those receiving no commentary were

525–534; Segal and Spaeth, *The Attitudinal Model*, 226–228; Segal and Spaeth, *The Attitudinal Model Revisited*, 321–323.

[26] Lee Epstein and Carol Mershon, "Measuring Political Preferences," *American Journal of Political Science* 40 (February 1996): 261–294.

[27] Epstein and Mershon, "Measuring Political Preferences"; Segal and Spaeth, *The Attitudinal Model Revisited*; Lee Epstein, Thomas G. Walker, and William J. Dixon, "The Supreme Court and Criminal Justice Disputes: A Neo-Institutional Perspective," *American Journal of Political Science* 33 (November 1989): 825–841.

[28] Epstein and Mershon, "Measuring Political Preferences," 281.

[29] Tate and Handberg, "Time Binding and Theory Building."

[30] Although the scaling is somewhat subjective, our analysis of newspaper accounts, books, and professional commentary confirms the accuracy of the coding scheme. The scores for the appointees serving during the post-Charter era were as follows: Pierre Trudeau (+1), Joe Clark (−1), Brian Mulroney (0), and Jean Chretien (+1).

[31] Wetstein and Ostberg, "Search and Seizure Cases in the Supreme Court of Canada."

[32] Segal and Cover, "Ideological Values and Votes."

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scored as 0. If the appointees were identified as moderate liberals or moderate conservatives, they were scored +1 and −1, respectively.

The fourth indicator of judicial ideology mentioned above was collected in order to conduct an external validity check on the first three measures. This last indicator of judicial ideology was drawn from forty lower court rulings that immediately preceded a justice's high court nomination, and reflected the proportion of liberal votes cast in those cases. We view this measure as a useful tool for assessing whether party identification, prime minister motivation, and newspaper ideology are effective measures of judicial liberalism for nominees. It was not included as a separate measure of judicial ideology in our final regression model, because some observers might contend that it suffers from the same circular reasoning problem that was found in early scholarship, since one would be using lower court vote scores to predict higher court voting behavior. The lower court liberalism scores ranged from a high of .725 for Justice Willard Estey (the most liberal score) to a low of .375 for Justices Peter Cory and Gerald LeDain, while those who did not serve on a lower court received a mean score of .504.[33] We provide a listing of all of our judge-level measures in the Appendix.

A correlation matrix was generated to assess the relationship between the three ideology measures at the time of the justices' nomination to the Supreme Court and their lower court voting patterns (see Table 1). Since the justices heard a divergent number of criminal cases during their Supreme Court service, the variables in the matrix were weighted to reflect each justice's respective participation rate in non-unanimous criminal disputes. The rationale behind weighting these variables is that justices who decided more cases should be more heavily represented in the data set. This potential problem is exemplified if one compares Justice William Stevenson, who heard 17 non-unanimous cases while on the court, to Justice Claire L'Heureux-Dubé, who handed down a total of 185 rulings. Since we are interested in explaining case votes at the individual level, if all the judges were weighted equally, it would skew the results in favor of justices who handed down the fewest decisions in the data set.

The correlations in Table 1 reveal that party of prime minister has a 0.98 correlation with the prime minister ideological motivation measure, indicating that these two measures are identical in tapping the same concept, namely party affiliation.[34] In addition, since the newspaper ideology measure also correlated

[33] Justices John Sopinka and Ian Binnie received the mean score, because they were elevated to the high court from private practice, while Justice Jean-Marie Beetz received this score because of the unavailability of English language translations for his rulings on the Quebec Court of Appeal in the early 1970s. It is important to note that Justices Lucien Chouniard and Charles Gonthier have scores that are based on twenty lower court decisions, rather than forty, because of the sparse number of lower court decisions handed down by these justices. All of the coding for this indicator is based on data drawn from decision summaries published in the *All Canadian Digests*, available online through *Lexis*, or *Western Weekly Reports* (for Justice Brian Dickson).

[34] The high correlation between prime minister ideological motivation and party of prime minister may be an artifact of the time period and data used in this study. Since the measure of prime minister

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TABLE 1

The Correlation between Newspaper Ideology and Political Party Measures of Justices Serving on the Supreme Court of Canada, 1984–2002

Variable	*Newspaper Ideology*	*Party of Prime Minister*	*Prime Minister Motivation*
Party of prime minister	0.54 ***		
Prime minister motivation	0.55 ***	0.98 ***	
Lower court liberalism	0.50 ***	0.00	0.00

Note: Table entries are correlation coefficients between the various measures, indicating the degree of association between them. A correlation of 1.0 suggests a perfect one-to-one relationship between the two measures, whereas a correlation of 0.0 suggests the measures are not at all related to each other. Observations are weighted in order to account for each justice's relative rate of participation in non-unanimous criminal cases, 1984–2002.

*** Significant relationship at the 99.9 percent confidence level.

fairly highly with the partisan measures (0.54 for party of prime minister, and 0.55 for prime minister ideological motivations), it suggests that newspaper coverage is also partially tapping the concept of party patronage. Yet it is important to note that the newspaper score was the only indicator that correlated highly with the external validation measure of lower court liberalism (0.50), suggesting that newspaper ideology and lower court liberalism are indeed tapping a concept distinct from party affiliation. While the two partisan measures appear to tap a concept one might label "party patronage," newspaper ideology and lower court liberalism appear to capture more directly the concept of "judicial ideology."[35] Since we are interested in exclusively tapping the latter concept, while at the same time avoiding the circular reasoning problem inherent in the lower court voting measure, we chose to include only the newspaper ideology score in our subsequent logistic regression analysis. Thus, from an empirical standpoint, the correlation matrix suggests that the newspaper ideology score would constitute the best available independent measure of ideology in the Canadian setting.

Although the correlation data suggest that the newspaper ideology would be the best measure for tapping the concept of judicial liberalism from an empirical perspective, it is not without flaws. Critics might maintain that the newspaper accounts tend to focus more on party connections than on a justice's ideological leanings and that as a result, this measure simply taps a nominee's party affiliation.[36] However, since this variable is highly correlated with both party affiliation

motivation only looked at the post-Charter period, there was only one justice appointed by a highly conservative prime minister. Accordingly, there was not sufficient variance in the scores for party of prime minister and prime minister motivation to generate more distinct measures. A listing of all the justices' scores on the measures is provided in the Appendix.

[35] Since the newspaper ideology variable is the only one that correlates highly with all three measures, it seems that newspaper accounts are based on both party references and general ideological assessments.

[36] We acknowledge that three of the justices (Julian Chouniard, Gerard La Forest, and Jean-Marie Beetz) received scores wholly based on commentary that focused on their political party connections,

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and lower court liberalism, there is only slight credibility to this claim. Another criticism is that this measure is simply based on one newspaper's account of judicial appointments. While this is an acknowledged limitation, the *Globe and Mail* was used because it is the most respected newspaper in Canada that has systematically covered the appointments to the high court over the last thirty years.

Despite the criticisms of the newspaper measure, there are strong theoretical arguments for including it in the attitudinal model as the best predictor of judicial ideology. Not only does it make intuitive sense to believe that newspaper commentary on a justice's ideological record would be a useful predictor of future voting behavior, previous scholarship has indicated that judicial appointments by prime ministers are not exclusively aimed at pursuing policy or electoral goals. Indeed, as F.L. Morton, Peter Russell, and Troy Riddell have indicated, "There has thus far been little evidence that the federal government has consciously relied upon ideological criteria to guide its Supreme Court appointments."[37] Moreover, newspaper commentaries on recent appointments have emphasized prime ministers' efforts to ensure that geographic, linguistic, and gender balances are maintained on the high court, along with a diversity of legal expertise, as opposed to ensuring the promotion of their own ideological motivations.[38] Collectively, these comments suggest that prime ministers in Canada are not as motivated by partisan concerns as their U.S. counterparts when making new appointments to the high court. Consequently, it makes both theoretical and empirical sense to use the newspaper liberalism measure (and not party affiliation) as the best predictor of ideological voting in a larger model of judicial decision making.

Data and Methods

The data for this portion of the study are drawn from published opinions in the Canadian *Supreme Court Reports* in the post-Charter era (1984–2002). To assess the influence of ideological attitudes and facts on case outcomes, our analysis focused on a particular subset of criminal cases, namely, right to

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while another four (Justices Louis LeBel, Michel Bastarache, John Major, and Beverley McLachlin) were partially based on partisan ties. Yet these four latter appointments also featured some newspaper commentary on judicial ideology that would have allowed coding even if there were no references to party connections. Another possible criticism is that there was no ideological commentary on six of the twenty-one appointees to the court in the *Globe and Mail*. Accordingly, they were labeled as moderates and given a score of 0 on the indicator. The shortcomings of this measure may help explain why it does not correlate more highly with the lower court liberalism indicator.

[37] F.L. Morton, Peter H. Russell, and Troy Riddell, "The Canadian *Charter of Rights and Freedoms*: A Descriptive Analysis of the First Decade, 1982-1992," *National Journal of Constitutional Law* 5 (Fall 1994): 51.

[38] See Janice Tibbetts, "PM Leaves Lasting Mark on Canada's Top Court," *Ottawa Citizen*, 11 August 2002; Daniel LeBlanc and Campbell Clark, "Quebec Anglophone Joins Supreme Court," *The Globe and Mail*, 1 August 2003; Kirk Makin, "'Lawyer's Lawyer' Binnie Named to Supreme Court," *The Globe and Mail*, 9 January 1998; and Sean Fine, "Search for Judge Turns to Atlantic," *The Globe and Mail*, 28 August 1997.

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counsel disputes. We limited our analysis to non-unanimous cases containing written reasons for judgment, because these cases necessarily identify patterns of judicial conflict on the court and thus highlight the attitudinal differences that exist among the justices. There were a total of fifteen non-unanimous right to counsel cases handed down during this period that met these criteria.[39] Since the attitudinal model theorizes that the votes of the justices will be a product of each justice's ideological leanings along with the attitudinal responses they have toward particular factual circumstances, the unit of analysis for the dependent variable is at the judge-vote level for each case.[40] The dependent variable is a dichotomous indicator identifying whether a justice casts a liberal vote in favor of the criminal defendant in a right to counsel dispute (vote = 1), or a conservative vote when their outcome favored the government (vote = 0). Our analysis examines 121 votes cast by justices in these contested right to counsel cases between 1984 and 2002, with the goal of predicting as many of those votes as possible by utilizing ideology and factual circumstances as the key predictors of votes.

Since advocates of the attitudinal model acknowledge that a judge's predisposition toward facts (in addition to ideology) can influence vote outcomes, we included six salient factual independent variables that are typically found in Canadian right to counsel cases.[41] The factual indicators in our model were coded from the lower court opinions in an effort to identify reliable factual indicators and to evade possible distortion of the facts by the Supreme Court justices themselves. In short, coding the factual circumstances in this manner ensures that the statistical model does not suffer from problems of circular reasoning. The dichotomous factual variables contained in our analysis include: whether no right to counsel warning was given by police to the defendant (no warning given); whether police failed to provide an adequate right to counsel warning (flawed warning); whether police provided a warning after detention

[39] The one oral judgment that was excluded from the analysis is *R. v. Babinski*, [1992] 3 S.C.R. 467. The cases included in the analysis are as follows: *R. v. Therens* [1985] 1 S.C.R. 613; *R. v. Ross* [1989] 1 S.C.R. 3; *R. v. Smith* [1989] 2 S.C.R. 368; *R. v. Greffe* [1990] 1 S.C.R. 755; *R. v. Elshaw* [1991] 3 S.C.R. 24; *R. v. Jones* [1994] 2 S.C.R. 229; *R. v. Bartle* [1994] 3 S.C.R. 173; *R. v. Prosper* [1994] 3 S.C.R. 236; *R. v. Pozniak* [1994] 3 S.C.R. 310; *R. v. Matheson* [1994] 3 S.C.R. 328; *R. v. Burlingham* [1995] 2 S.C.R. 206; *R. v. Calder* [1996] 1 S.C.R. 660; *R. v. Feeney* [1997] 2 S.C.R. 13; *R. v. Cook* [1998] 2 S.C.R. 597; and *Winters v. Legal Services Society* [1999] 3 S.C.R. 160.

[40] Segal, "Justices as Human Decision Makers"; Segal and Spaeth, *The Attitudinal Model*, 229–230; Segal and Spaeth, *The Attitudinal Model Revisited*, 324–325.

[41] We began our analysis with a set of hypotheses tied to fourteen factual variables that parallel the discussion of factual circumstances in a leading constitutional law text in Canada (see Peter Hogg, *Constitutional Law of Canada*, 4th ed. [Toronto: Carswell, 1997], 1149–1165). We subsequently relied on stepwise regression procedures to help identify the six most prominent factual circumstances in non-unanimous right to counsel disputes. Thus, our data results represent the most parsimonious model to explain variance in the dependent variable when examining non-unanimous right to counsel cases. The six factual variables included in our study are salient ones that most scholars would identify as typical fulcrums of attitudinal conflict in the right to counsel area. Having said this, we acknowledge that a different pool of contentious cases might produce a slightly different list of salient factual circumstances that influence the justices' votes.

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(warning after detention); whether a defendant requested an attorney but was never allowed to consult with one (ask for attorney—never consult); whether police were provided tips in a drug-related arrest (tips to police); and whether the defendant sought to apply his/her counsel protections in unique circumstances at or after the charge stage of the criminal trial process (late application of the right). The coding scheme and hypothesized relationship for these dichotomous variables is rather straightforward. For example, in cases where police did not appropriately warn the suspect of his/her counsel rights, it was expected that justices would tend to vote in favor of the criminally accused, because a clear Charter violation had taken place. Obviously, if police had provided an adequate warning, justices would be predisposed to favor the government, all other things being equal. Consequently, the "flawed warning" variable was scored as a 1 if police failed to provide an adequate warning, and 0 in all other cases.

Two other independent variables address the nature and timeliness of a police warning. It was expected that justices would be more likely to favor the criminally accused in situations where police failed to provide a warning to defendants at all or where a warning was given only after the accused had been detained for some time. These two factual scenarios are contrasted with situations where an immediate warning was given at the time of arrest or detention, which is omitted from the regression equation for comparison purposes. As a result, if no warning was given, or a warning was provided only after detention, a case was coded a 1 for these "facts," while a score of 0 was entered for all other situations.

A fourth independent variable identified situations where defendants were not given the right to consult with an attorney, even though they had made an explicit request to do so. The Canadian court has addressed several cases dealing with this issue, and often the facts of the case demonstrate some form of police deception or clear intention to ignore the defendant's request. For example, if police ignored a request to speak to a lawyer, and were subsequently able to obtain incriminating evidence after badgering a suspect for hours on end, we coded that case a 1 for the variable "ask for an attorney—never consult." In contrast, all other cases were coded as 0. Given this scenario, we hypothesized that justices would be more sympathetic to the defendant's Charter claims if his request for an attorney had been ignored or some form of police deception had occurred. The logic here is that when justices are confronted with a defendant who explicitly demanded an attorney and yet police engaged in behavior that circumvented this right, the justices are more prone to rule in favor of the criminally accused.

There are a number of cases in Canada that address both right to counsel and search and seizure claims. In these instances, one salient feature that might draw the attention of the justices is whether police are responding to anonymous tips from citizens or other law enforcement agencies. In these cases, justices might be swayed to vote in favor of the prosecution, because there exists an element of corroborated suspicion flowing from the a priori observations of someone other

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than the police. In short, the right to counsel claims of a defendant might be trumped in the minds of the justices by the accumulation of damning evidence garnered from tips and the subsequent police search. In line with this reasoning, when tips were a central part of the case, we scored those disputes with a 1, while all other cases received a 0.

The last factual variable captures circumstances in which a defendant seeks to stretch counsel protections beyond the initial post-custody phase. For example, in one circumstance, the defendant tried to invoke this right at a pre-trial psychiatric evaluation, whereas in another, a convict sought to expand the right to a prison disciplinary hearing.[42] Given these scenarios, it was hypothesized that justices would be less sympathetic to stretching this right to novel situations, because they believe this right should typically be triggered only at the time of arrest and detention. The logic behind this hypothesis is that justices may take timing into consideration, so that defendants who seek the right to counsel at the time of arrest or at the station house will be looked upon more favorably than those who attempt to utilize the right further on in the trial or post-trial process. Our measurement of this variable is coded as a 1 if this right is sought at the later phase of the criminal process and as 0 in all other cases.

The ideology measure used in our model is the newspaper ideology score for each justice, which ranges between +2 (for the most liberal justices) to −2 (for the most conservative ones). In line with the attitudinal model, it was expected that liberal justices would tend to vote in favor of the defendant more frequently than would their conservative counterparts. Moreover, in line with attitudinal theory, we anticipated that the ideological measure would be statistically significant, even in the face of controlling for the six factual variables in the equation.

RESULTS

Logistic regression analysis was conducted because this study utilized a dichotomous dependent variable that takes on the value of 1 for a liberal vote or 0 for a conservative vote.[43] Table 2 provides logistic regression coefficients for the six factual variables and the newspaper ideology score, along with two models identifying the most salient facts for justices on different sides of the ideological spectrum. The data from the full regression model indicate that the overall frequency of liberal votes in the entire data set was 60 percent, which means that if one were to simply guess a "liberal" outcome for each justice's decision, one would correctly identify 60 percent of the votes (see the bottom of column 1 in Table 2). The full model (featured on the left side of Table 2) was able to accurately predict the voting behavior of the justices 74 percent of

[42] *R. v. Jones* [1994] 2 S.C.R. 229; *Winters v. Legal Services Society* [1999] 3 S.C.R. 160.

[43] John H. Aldrich and Forrest D. Nelson, *Linear Probability, Logit, and Probit Models*, Sage University Paper Series on Quantitative Applications in the Social Sciences, series no. 07-045 (Newbury Park, CA: Sage Publications, 1984).

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TABLE 2

Logistic Regression Predictions of Liberal Votes in Canadian Right to Counsel Cases, 1984–2002

	Full Model (All Justices)		*Liberals and Moderates*		*Conservatives and Moderates*	
Variable	*Regression Coefficient*	*Change in the Probability of a Liberal Vote*	*Regression Coefficient*	*Change in the Probability of a Liberal Vote*	*Regression Coefficient*	*Change in the Probability of a Liberal Vote*
Ideology of justice	0.42 **	38%	—	—	—	—
Warning after detention	2.62 ***	51%	2.70 **	48%	3.57 **	67%
Late application of the right	−1.66 **	−39%	−2.63 ***	−57%	—	—
Ask for attorney—never consult	1.64 *	37%	1.79 *	38%	2.21 *	50%
No warning given	2.42 *	35%	—	—	3.78 *	43%
Flawed warning	—	—	—	—	1.35 *	32%
Tips to police	—	—	—	—	—	—
Constant	−1.56	—	−0.84	—	−3.09	—
Chi square	132.16 ***	—	90.79 ***	—	81.22 ***	—
Frequency of liberal votes	60%	—	64%	—	55%	—
Percent of votes correctly predicted by the model	74%	—	77%	—	75%	—
Reduction in error	37%	—	35%	—	44%	—
Number of votes analyzed	121	—	87	—	75	—

Note: Coefficients that are not statistically significant are omitted from the Table.

* Denotes statistical significance at the 95% confidence level, ** at the 99% level, and *** at the 99.9% level.

the time, which indicates that the model is able to predict an additional 37 percent of the remaining variance in voting behavior beyond that of the simple guessing strategy of always predicting liberal outcomes (see the bottom of Table 2).[44] These findings reveal that the combination of the six factual circumstances and the ideological leanings of justices helps to explain a significant proportion of the voting differences in non-unanimous post-Charter right to counsel cases.

The data at the top left of Table 2 indicate that judicial ideology has a statistically significant impact on the votes of justices in contested right to counsel cases (coefficient = 0.42, significant at the 99 percent confidence level).

[44] The calculation of the proportional reduction in error measure is modeled after prior work. See Timothy M. Hagle and Harold J. Spaeth, "The Emergence of a New Ideology: The Business Decisions of the Burger Court," *Journal of Politics* 54 (February 1992): 120–134; and Saul Brenner, Timothy M. Hagle, and Harold J. Spaeth, "Increasing the Size of Minimum Winning Coalitions," *Polity* 23 (Winter 1990): 309–318.

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It is important to note that while the coefficient for newspaper ideology appears smaller in comparison to most of the factual variables in the model, this is only because it is measured on a different scale that ranges from −2 to +2 (as opposed to 0 or 1). Yet, the relative power of ideology's influence in comparison to the six factual variables can be found in the second column of data in Table 2, which compares the probability, or odds, of a liberal outcome when the value of the variable is set low (−2) with the probability of a liberal outcome when the variable is set high (+2), while holding all other variables at their mean level. The change between these two conditions, found at the top of column 2, indicates that an extremely liberal justice is 38 percent more likely to cast a liberal vote in a right to counsel case than an extremely conservative justice. A comparison of the change in probability scores in the model demonstrates that this variable proved to be the third most powerful factor in the equation.

Four of the six factual variables in the equation were statistically significant at or beyond the 95 percent confidence level, and the impact of each variable is in the expected direction. The confidence level suggests that 95 times out of 100, we are confident that these four factors will help explain liberal voting patterns, and that their impacts are not simply due to chance. The most important factual variable in the equation was whether an individual did not receive a right to counsel warning until some time after detention (coefficient = 2.62). As expected, justices are more likely to rule in favor of the accused when his/her right to counsel warning is provided late in the process. Indeed, the results suggest that justices are 51 percent more likely to rule in favor of the individual when a right to counsel warning is only given after detention, as opposed to immediately at the time of their arrest (see column 2 of Table 2). The impact of this variable is illustrated in *R. v. Elshaw* [1991], where police did not inform the accused of his counsel rights when they stopped and questioned him at a park, obtained his ID, and subsequently questioned him in a police van.[45] It was only after he was formally charged with child molestation at the police station that the defendant was told of his right to counsel. Not surprisingly, the majority of the court sided with Elshaw in this case, and thus emphasized the importance of providing a timely right to counsel warning.

The second most important factual variable influencing judicial votes is whether defendants seek a right to counsel long after arrest and/or detention at the station house (late application of the right). The impact of this measure is negative and statistically significant in the expected direction (coefficient = −1.66, significant at the 99 percent confidence level). In essence, the data indicate that justices tend to be 39 percent less supportive of the accused seeking to apply this Charter right beyond the customary circumstances (see column 2 of Table 2). An example of this can be found in *Winters v. Legal Services Society* [1999], where the majority of the court rejected the contention that a convict is entitled to an attorney in prison disciplinary hearings that take place outside of the ambit of

[45] [1991] 3 S.C.R. 24.

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criminal proceedings.[46] Clearly, Canadian justices are not inclined to extend counsel rights to novel situations outside the ambit of typical circumstances.

As expected, justices do not respond favorably to authorities in situations where the accused asks for an attorney and is never able to consult with one (coefficient = 1.64, confidence level of 95 percent). The data indicate that when this occurs in a case, individuals have a 37 percent greater chance of obtaining a ruling in their favor (see column 3 of Table 2). One of the most notorious examples of this type of factual scenario is *R. v. Feeney* [1997], where police continued to interrogate a murder suspect over the course of a weekend, despite the defendant's request to talk to an attorney and several unsuccessful attempts to contact one.[47] It was not until Monday morning that Feeney was allowed to talk to a lawyer, and by that time, he had already broken down, given a confession, and provided fingerprints to the police. The results of our study indicate that justices on the post-Charter court have not looked favorably on police when these types of factual scenarios play out to the extreme disadvantage of defendants.

The fourth significant factual variable in the equation involved situations where no right to counsel warning was given by police (coefficient = 2.42, confidence level of 95 percent). The findings suggest that if police failed to provide such a warning, justices were 35 percent more likely to rule in favor of the criminally accused, all other things being equal. The importance of this factor can be seen in one of the early Charter landmark rulings of the Court, *R. v. Therens* [1985], where a drunk driver was asked to go to the police station to provide a breath sample, but was not made aware of his counsel rights at either the roadside or the police station.[48] The court sided with the defendant in this important post-Charter ruling, demonstrating that the justices are more likely to rule in favor of the accused when no right to counsel warning is given at the time a person is initially stopped by police.

The two remaining factual variables, namely flawed warning and tips to police, were not statistically significant in the full model, and thus the data for these variables are not reported in Table 2. These findings suggest that if police gave a flawed right to counsel warning or when citizens provide tips to authorities, one cannot confidently conclude that the justices will be more or less likely to rule in the favor of the criminally accused. In other words, these two variables do not help explain the voting behavior of the Canadian court as a whole in the contested right to counsel cases, but as we suggest later, they may for particular sets of justices.

Collectively, the six factual variables and the measure of judicial ideology produce a robust model to account for the variance in non-unanimous right to counsel claims in the post-Charter era. Four of the factual variables were statistically significant and in the hypothesized direction, and comprise important

[46] [1999] 3 S.C.R. 160.
[47] [1997] 2 S.C.R. 13.
[48] [1985] 1 S.C.R. 613.

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dimensions that are likely to remain pivotal variables for explaining judicial conflict in this area of law both within Canada and potentially in other cultural settings. Even though these findings are important in and of themselves, the question remains: do these factual variables impact justices from different sides of the ideological spectrum in different ways? In other words, do liberal justices respond to facts differently than conservatives? The true importance of Jeffrey Segal and Harold Spaeth's full attitudinal model becomes more evident if one can demonstrate systematic differences in the way that factual variables influence justices. We know of no scholarship to date that has provided an ideological comparison of this nature, and our effort to address this issue is found on the right side of Table 2.

To determine whether there was differential treatment toward case facts, we split the data set into two ideological groups for separate data analysis: conservatives plus moderates, and liberals plus moderates. Although we are aware that the two groups are not mutually exclusive, such a division was necessary to overcome the limitations of a small data set.[49] Even though dividing the data in this manner works against finding important differences between the two groups, distinctive approaches to case facts were found. For the liberal justices, the most important factual variable influencing their vote choice was whether there was a late application of the right to counsel on the part of the accused (coefficient = −2.63). In such situations, liberal justices were 57 percent less likely to favor the defendant. Liberal justices were clearly affected by efforts to extend counsel rights to novel situations, and were unsympathetic to such arguments (see columns 3 and 4 of Table 2). However, this variable was not at all important for the conservative side of the court, perhaps because they were already prone to reject these efforts by the accused in the first place. Because these findings were not statistically significant for the conservative justices, we have omitted the data from the Table.

Two other important differences between the two camps of the court are evident when the justices are confronted with scenarios involving a flawed warning or where no warning was given at all. Conservatives were 43 percent more likely to favor the defendant if there was no warning (coefficient = 3.78) and 32 percent more likely to do so in cases involving a flawed warning (coefficient = 1.35). Meanwhile, liberals were no more likely to favor the defendant in such situations. One explanation for this discrepancy may lie in the fact that liberals have a greater propensity to side with the accused anyway, having voted in their favor 64 percent of the time (see the bottom of column 3). Thus, while the presence of these particular facts seems to have triggered attitudinal responses to favor the criminally accused on the part of the conservative justices, it did not for their liberal counterparts. In contrast, both liberals and conservatives responded

[49] When we separated the data set into three categories (liberals, moderates, and conservatives) and ran the analysis, several of the fact variables in the distinct models featured limited or no variance because of the small size of the data set. It was only after aggregating moderates with justices at the two ideological extremes that these variance issues were overcome.

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similarly in situations where police gave the counsel warning after detention (coefficient = 2.70, 48 percent increase in support for the accused for liberal justices, coefficient = 3.57, 67 percent increase for conservatives). Likewise, a similar pattern appeared when the defendant asked for an attorney and was never given an opportunity to consult with one (coefficient = 1.79, 38 percent increase in support for the defendant for liberals, coefficient = 2.21, 50 percent increase for conservatives). Clearly, the existence of these two factual scenarios triggered both sides of the bench to be more likely to rule in favor of the criminally accused.

The cumulative importance of these findings is that at least in the right to counsel area, some facts are more important than others. Moreover, justices from different ideological camps do indeed respond in a systematically different way to critical factual scenarios that often appear in right to counsel disputes. In general, this analysis suggests that future studies of the attitudinal model would be well served to explore whether similar differential impacts are evident in other court settings and in other issue areas. For instance, scholarship in the search and seizure area conducted by Segal, and subsequently by Matthew Wetstein and C.L. Ostberg, might benefit from a reexamination to determine whether divergent attitudinal responses to facts occur among justices from different ends of the ideological spectrum.[50]

Conclusion

This study began with three goals: to analyze measures of judicial liberalism that can be utilized in studies of the Canadian Supreme Court and perhaps appellate courts in other cultural settings, to examine factual circumstances that might trigger attitudinal voting patterns on the court, and to assess the relative weight of facts and ideology in an attitudinal model. To that end, the study has identified the validity of utilizing a newspaper ideology score as a viable measure for assessing the overarching ideology of Supreme Court nominees in Canada. This measure, in turn, proved to be a powerful predictor of ideological conflict in the post-Charter right to counsel area. Moreover, this study demonstrated that justices in Canada do respond to factual circumstances when resolving right to counsel disputes, most notably whether a warning is provided after detention, along with whether there was a late application of the right, no warning was given, or a defendant asked for an attorney and was never able to consult with one. Collectively, these four factual variables included in the equation were statistically significant and in the hypothesized direction. Taken together, the variables highlight important factual dimensions that are pivotal for explaining judicial conflict in Canada and potentially, in other cultural settings as well. Moreover, several of the factual indicators triggered systematically different attitudinal responses from justices

[50] Segal and Spaeth, *The Attitudinal Model Revisited*; Wetstein and Ostberg, "Search and Seizure Cases in the Supreme Court of Canada."

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at the two ideological extremes, which in turn provides clear evidence that the full attitudinal model flourishes in the Canadian right to counsel area. Most importantly, while liberals seem singular in their response to the late application of the right to counsel, conservatives alone appear to respond to situations where no warning was given, or where the warning was flawed. This finding is critical and adds considerably to the literature on attitudinal behavior, because no scholarship to date has demonstrated that there is differential treatment of factual indicators by justices on opposite sides of the ideological divide.

One of the most salient findings of the study is that ideology indeed plays a prominent role in determining voting behavior in post-Charter right to counsel cases. The fact that the attitudinal model correctly predicted fully 74 percent of judicial votes compares favorably with the levels of prediction found in Segal and Spaeth's analyses of search and seizure cases in the United States (71 percent correctly classified), and with Wetstein and Ostberg's findings in Canada (77 percent).[51] These results provide strong evidence that scholars should continue to conduct this type of analysis in the future in order to honor Justice Iacobucci's appeal to develop a more comprehensive understanding of judicial conflict on the Canadian high court.

The study has something valuable to offer to scholars of the U.S. Supreme Court as well. First, despite the widespread appeal of the attitudinal model, it remains largely untested in a number of important areas of U.S. case law. The findings of this study suggest that researchers might find it fruitful to examine the relative impact of fact patterns in right to counsel decisions on U.S. appellate courts. Scholars may discover that some of the same factual circumstances that influence Canadian justices are likely to be significant for U.S. judges. The outcomes of this study are also important because they provide further evidence of the relevance of the attitudinal model beyond the confines of the United States and thus provide one more link in an ever-widening chain of studies that attest to a potentially global model for explaining judicial behavior. The findings are even more remarkable in light of the fact that the Canadian Supreme Court does not feature the ideological polarization that is typically found on the U.S. court. Despite the high degree of harmony on Canada's high court, however, ideological conflict was prevalent in right to counsel disputes, and justices from different sides of the ideological spectrum responded in different ways to some of the critical case facts. Yet, the question remains whether this type of conflict and attitudinal response appears in other court settings that are more culturally divergent from that of the United States. Is ideology a central component of decision making in courts in other parts of the world? Attitudinal theory suggests that it is paramount, but public law scholars have a long way to go before demonstrating that claim in multiple issue areas across multiple courts.

[51] Segal and Spaeth, *The Attitudinal Model Revisited*, 325; and Wetstein and Ostberg, "Search and Seizure Cases in the Supreme Court of Canada," 768–769.

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APPENDIX

Measures of Ideology and Party for Justices of the Canadian Supreme Court, 1984–2002

Justice	*Newspaper Ideology Score*	*Party of Prime Minister*	*PM Ideological Motivation Score*	*Lower Court Liberalism*
Bastarache	+2	+1	+1	.400
Beetz	+2	+1	+1	.504
Binnie	0	+1	+1	.504
Chouinard	−2	−1	−1	.500
Cory	0	−1	0	.375
Dickson	+1	+1	+1	.450
Estey	0	+1	+1	.725
Gonthier	0	−1	0	.600
Iacobucci	0	−1	0	.500
LaForest	+2	−1	0	.675
Lamer	+2	+1	+1	.500
LeDain	+1	+1	+1	.375
L'Heureux-Dubé	−2	−1	0	.350
Major	−2	−1	0	.500
McIntyre	0	+1	+1	.425
McLachlin	+1	−1	0	.525
Sopinka	−1	−1	0	.504
Stevenson	0	−1	0	.400
Wilson	+2	+1	+1	.600

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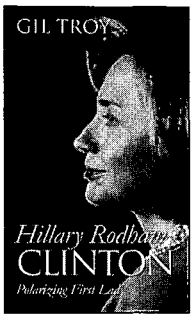

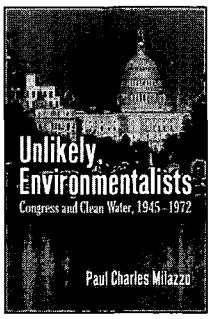

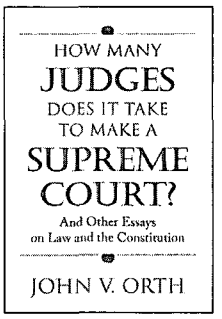

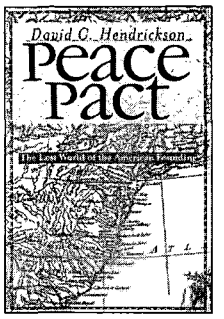

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Book Reviews

The Politics of Precedent on the U.S. Supreme Court *by Thomas G. Hansford and James F. Spriggs II. Princeton, NJ, Princeton University Press, 2006. 176 pp. $29.95.*

Which provides the best explanation of Supreme Court decisions, the law or the justices' policy preferences? Over the years, political scientists have disagreed as to which most influences the Court's decisions, often arguing that one of these issues rules to the exclusion of the other. In their excellent study of the interpretation of precedent in the Supreme Court, Thomas Hansford and James Spriggs demonstrate that both law and politics matter, as these are not mutually exclusive concepts regarding judicial behavior. Perhaps more important than this essential finding, the authors exhibit how good social science can and should be executed.

Scholars have long debated how precedent, the body of law in the United States, is utilized by the Court. Those invested in attitudinal or strategic approaches to explaining judicial behavior generally contend that the justices' preferences on policy issues represent a prevailing goal or influence. Others claim that devotion to the law, irrespective of policy or politics, is the overriding factor in judicial decisions. The authors innovatively meld these concepts in explaining how the Court interprets precedent. In particular, they develop a parsimonious theory regarding how and why the Court interprets precedent, then proceed to test their theory under disparate conditions with various data.

Their theory is based on two key factors: that justices interpret precedent, first, to influence current legal policy and, second, to justify new policies in current opinions. In other words, following *stare decisis*, the legal doctrine that judges should abide by judicial edicts of the past, legitimizes the Court's policy choices and, more generally, the Court itself. By viewing precedent in this manner, the authors employ precedent as a dependent variable, instead of an explanatory variable, as it ordinarily is applied in judicial studies. With a concept they dub "precedent vitality" (p. 22), the authors argue that some precedents are more authoritative than others; moreover, precedent vitality is a dynamic process that depends not on the age of the precedent but instead on how the precedent is treated by subsequent Courts. Thus, a combination of precedent vitality and the justices' preferences explains the Court's interpretation of precedent.

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After positing their theory, the authors utilize various statistical models, including logit, survival, and event count analyses, as appropriate, to test their theory, and the results generally comport with their theory. However, perhaps their most important contribution concerns measurement of the dependent variable. The authors use *Shepard's Citations*, a legal citation service detailing how subsequent courts treat prior precedents. Lawyers, judges, and law professors religiously use *Shepard's*; it is a vital tool within the legal community. Although political scientists have employed *Shepard's* more than occasionally, with few exceptions, it has not been used to operationalize dependent judicial variables. Employing *Shepard's* to decipher how courts treat precedent is a legitimate and appropriate use of this citation index, but there has been some trepidation among judicial scholars about applying *Shepard's* in this fashion. While one may quibble with some of the authors' proxies for their independent variables, there should be no doubt regarding the appropriateness of *Shepard's* as a coding mechanism. The authors have demonstrated in convincing detail how *Shepard's* is a reliable and valid measure for this purpose.

The authors have done a commendable job in showing how both law and politics matter when the Supreme Court interprets precedent. Even if scholars are not well versed in utility theory or the empirical methods employed in this book, the authors' uncluttered explanation of the substance of their theory and findings makes *The Politics of Precedent* accessible to any student of the Supreme Court.

MARK S. HURWITZ
Western Michigan University

Logics of Hierarchy: The Organization of Empires, States, and Military Occupation *by Alexander Cooley. Ithaca, NY, Cornell University Press, 2005. 191 pp. $35.00.*

For some time now, countless international relations scholars have scrutinized the anarchic nature of the international system, even though the history of international politics is replete with security and economic arrangements that are hierarchical, that is, that require the curtailment of some freedom of action, and that display different degrees of institutionalization. To be fair, there have been a few sophisticated studies of hierarchy, but Alexander Cooley rightly laments what, for the most part, remains a "caricatured understanding of the politics of hierarchy" (p. xi) and undertakes to remedy this shortcoming.

Drawing on the institutional literature in economics, and particularly such renowned scholars as Alfred Chandler, Ronald Coase, Oliver Williamson, and Douglas North, Cooley transfers their work on modern firms, networks, and franchises to the political realm. Much like these economists, he distinguishes between two ideal types of firms: the unitary (U) form (organized along functional lines) and the multidivisional (M) form (organized territorially). He then

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persuasively demonstrates how an analysis of political hierarchies based on their organizational form (states, empires, occupations) allows one to identify significant differences in governance, both within hierarchical peripheries and sectors, and across. Or, put differently, Cooley develops a sophisticated conceptual framework of organizational forms in the political realm that allows him to shed light on how hierarchies are organized and how they differ with respect to governance costs, information flow patterns, and types of opportunism.

He then addresses the likelihood of institutional change, thereby introducing a much-welcomed dynamism, and examines what happens after a hierarchy collapses. Whereas peripheral U-form sectors "tend to be reconfigured, change, or collapse" (p. 125), he finds that M-form sectors, for the most part, remain intact.

In a nutshell, there are three reasons sure to secure this thought-provoking book an important place in the political science literature. First, parsimony: simply differentiating between different forms of hierarchy allows Cooley to account for significant variation in political institutions. Second, generalizability: not only does the author examine cases from both the security and economic realms, but the broad geographic scope—Soviet Central Asia, Yugoslavia, Korea, Iraq—makes this study particularly attractive. Third, predictive power: Cooley provides us with the analytical tools to speculate which forms of hierarchy are likely to endure versus which are likely to fall by the wayside, and thereby allows us to generate policy prescriptions of great use to a plethora of transnational actors.

As Cooley makes clear, his firm-type model is not the only way to make sense of hierarchical governance structures in international politics. There are ideational (sociological) and power-based (realist) competitors, yet these are best viewed as complementary rather than mutually exclusive. In fact, it is precisely the interdisciplinary nature of Cooley's approach—borrowing from "the fields of management scholarship, institutional economics, organizational sociology, and political science" (p. 179)—that makes it so appealing.

Last but not least, this timely book promises applicability to current events. As Cooley demonstrates himself, his firm-type model can shed light on recent forms of monetary integration (currency unions, dollarization, currency boards), the rise of tax havens, and credit-rating agencies. It is therefore conceivable that his analytical framework might also be of help to decision makers in the Middle East who are confronted with the difficult task of restoring order and bringing about hierarchical governance structures that will mitigate the effects of anarchy.

KATJA WEBER
Georgia Institute of Technology

Electing to Fight: Why Emerging Democracies Go to War *by Edward D. Mansfield and Jack Snyder. Cambridge, MA, MIT Press, 2005. 288 pp. $32.95.*

Critics of the George W. Bush administration's justification of the Iraq war as regime change for democracy laud this book. The authors proclaim it not as a

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refutation of democratic peace theory, only as an important qualification. But under scrutiny, the qualification provides few grounds to reject a policy of peaceful democratization.

The book continues the authors' ambitious decade-long research program. It drops their widely debated 1995 claim that newly democratic countries in general are dangerous to peace. They then narrowed that claim to apply to incomplete democratic transitions—states that liberalize somewhat but fall short of full democracy. This book introduces new theory and a new variable from the old Polity III data set: central concentration of state authority. They now argue that the *combination* of some aspects of incomplete transition with weak central institutions is what makes war likely.

The volume combines statistical analysis and case studies. Two statistical chapters address the influence of democratization on wars, allowing a welcome focus on big events with major consequences. Yet wars—especially by democratizing states—are rare events, raising the risk of explaining only a few cases meeting very particular conditions.

They track every country in the world in each of 176 years, providing over 9,000 country-years. In 537 country-years, some state experienced some degree of democratic transition by one or more of four indicators (p. 175). The first statistical chapter addresses the onset of all external wars, including colonial and imperial wars. But since virtually all the world's people now live in independent countries, the contemporary implications may be limited. The next chapter addresses only the seventy-nine interstate wars. They analyze by pairs of countries to control for particular characteristics of each pair—for example, whether democratizing countries fight democracies or dictatorships. Another move looks at the initiators of wars, while cautioning that states sometimes start a war because they fear attack. They find little evidence that complete democratic transitions often lead to war, but some incomplete democratic transitions may, especially if central authority is weak.

They consider in detail the "ten case studies that comprise all of the democratizing states in our data set that initiated interstate wars," correctly omitting some communist states whose partial "democratization" is highly questionable (p. 169). But the case studies and the statistical analysis do not match well. A key variable—exclusionary nationalism, hard to measure statistically—appears only in the case studies, where they always find it. Because these are all war cases, however, we have no idea how common exclusionary nationalism (or a long list of other exacerbating variables from p. 67) is in non-war outcomes. Of the ten cases, they claim seven as starting a war through the causal processes they specify (p. 225). Yet four are not listed in the Appendix (pp. 285–287) as even experiencing a war following an incomplete transition. France 1849 arguably made a complete transition (pp. 186–187 and the Appendix). Serbia 1885, Iraq 1948, and Turkey 1974 do not appear in the list for any kind of war, and anyway Turkey's transition was complete (p. 223). The three remaining incompletely democratized initiators are Prussia/Germany

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and Chile from the nineteenth century, and Argentina 1982. Argentina "liberalized" in 1981 from 1 to 2 on a single five-point scale, and had an average—not low—level of concentrated central authority (p. 116).

The evidence does not support their wide claim (p. 37) that "democratizing states are highly war-prone." Some changes in the research program might be productive. Examining the nearly 500 country-years of peaceful democratic transition could tell us much about how countries' leaders and their international supporters usually manage even partial democratization peacefully. Another move would ask whether peace is more likely from democratization carried out by a country's own citizens rather than imposed from outside.

BRUCE RUSSETT
Yale University

Presidential Commissions and National Security: The Politics of Damage Control *by Kenneth Kitts. Boulder, CO, Lynne Rienner, 2006. 194 pp. $49.95.*

The 9/11 Commission has sparked a renewed interest in studying the dynamics and politics of presidential commissions. Although blue-ribbon panels are nearly as old as the Republic, the 9/11 Commission stands in a league of its own: its 2004 final report became an instant national best-seller, and its lobbying campaign for intelligence reform attracted more television news coverage in the summer of 2004 than the war in Iraq. When a 567-page government document commands that kind of attention, you know something interesting is at work.

The academic literature about commissions is old but surprisingly small, thin, and focused on domestic policy. For decades, scholars have periodically returned to the same questions: Why do presidents delegate political authority to blue-ribbon panels? What makes some commissions more effective than others? What general lessons or observations can be discovered by comparing different commissions across time? To date, however, there are few satisfying answers. This is a field ripe for development.

Kenneth Kitts's book, *Presidential Commissions and National Security*, seeks to make a significant contribution by examining the 9/11 Commission alongside four of the most important national security commissions in modern American history: the Roberts Commission, which investigated the Japanese attack at Pearl Harbor; the Rockefeller Commission, which examined Central Intelligence Agency abuses in the 1970s; the Scowcroft Commission on the MX missile; and the Tower Commission, which investigated the Iran-Contra scandal. Kitts's book is the first serious treatment of national security commissions in the literature, and it is long overdue.

The book's greatest strength is its thick description of each commission's creation and operation. The Tower Commission chapter is particularly

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strong, benefiting from the author's personal interviews with principal political players as well as some careful research. The other case studies are less developed, at times relying on questionable secondary sources and unverified assertions. For example, Kitts writes that President Ronald Reagan nixed the proposal to name Henry Kissinger chairman of his MX missile commission, but that aides constructed a cover story, claiming that Kissinger had declined the job instead. "The truth," Kitts writes, "was never disclosed" (p. 80). Kitts's evidence of the truth, however, consists of one interview with a single anonymous source. In other places, Kitts makes important claims without any citations or evidence at all. Among them, he writes that most national security commissions have been created since September 11 (p. 131) and that legislative efforts to exert more influence on the composition and operation of blue-ribbon commissions began in the 1980s (pp. 172–173). Unless Kitts has a data set stashed somewhere, one can only conclude that both assertions—which deserve careful study in their own right—are grounded in intuition more than empirics.

Unfortunately, Kitts's description comes at the expense of analytic depth. The case studies are chock-full of details about everything from the quality of individual stenographers to commission meeting schedules and will likely provide useful information for future research. Analysis, however, is relegated to a few paragraphs at the end of each case study and a very short and unsatisfying concluding chapter. The overall effect is that details of specific commissions are illuminated but the bigger issues about the politics of presidential commissions remain obscured. In the end, Kitts's major finding is that commissions are creatures of politics. This hardly seems like news. Kitts tries to argue that it is, mischaracterizing "mainstream" commission scholars as wooly-eyed, naïve people who view commissions as effective and apolitical.

One comes away from this book with a sense of missed opportunities. Three are particularly important. First, Kitts argues that national security commissions are fundamentally different from their domestic-policy counterparts—an interesting claim—but never explains why. One answer lies in his case studies, but it is never teased out for serious examination: unlike other commissions, national security commissions must struggle over how to obtain, and whether to release, classified information. The tension between protecting vital national security information and revealing it as part of a public inquiry sets these bodies apart. Second, Kitts dodges the question of gauging commission effectiveness, opting instead to give ad hoc evaluations of commission chairmen in his conclusion (pp. 171–172). Third and finally, he provides a snapshot of some commissions without a broader examination of the full commission picture. The result is a series of interesting case studies without strong analytic threads between them.

AMY B. ZEGART
University of California, Los Angeles

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Thicker than Oil: America's Uneasy Partnership with Saudi Arabia *by Rachel Bronson. New York, Oxford University Press, 2006. 384 pp. $28.00.*

In post-September 11 America, there has been a flood of books on Saudi Arabia, many of them sensational and dire in their predictions. It is, therefore, refreshing to find a serious book on the U.S.–Saudi relationship that avoids both the idealization that was once the norm and the now-fashionable demonization. Rachel Bronson, a senior fellow at the Council on Foreign Relations, has done her homework, has read widely, and has talked to a wide range of scholars and policymakers. The result is a book that is informative and reliable.

When writing about Saudi Arabia, it is tempting to focus primarily on oil. But Bronson is quick to point out that the relationship between the United States and the Saudi kingdom has gone well beyond oil. Indeed, if there is a novel emphasis in this account of the relationship, it is on the congruence of interests between the two countries during the Cold War. Saudi Arabia was adamantly anti-communist, and successive U.S. administrations built on that fact to develop joint projects that wed Saudi financial resources and, at times, religious influence to a series of U.S.-targeted covert operations. While many Americans who have served in government have been aware of some of these adventures—Angola, Nicaragua, South Yemen, as well as the major undertaking in Afghanistan—nowhere else have these projects been described so accurately. The Saudis were generally not eager to draw attention to their role in these undertakings, and as a consequence, the U.S. public was often not aware of what was going on behind the scenes.

Of course, even at the height of U.S.–Saudi cooperation, there were serious differences over Palestine and other inter-Arab issues. Bronson describes quite well the mounting frustration felt by the Saudis on the eve of the October 1973 war and the calculus that led King Faisal to impose an oil embargo on the United States as a way of pressuring President Richard Nixon and Secretary of State Henry Kissinger into playing an active role in the post-war diplomacy. Kissinger resented what he called Saudi blackmail, but his resort to shuttle diplomacy was in part a response to that pressure.

With the end of the Cold War, in Bronson's telling, the U.S.–Saudi relationship began to lose some of its raison d'être. This comes as something of a surprise, since the Iraqi invasion of Kuwait in August 1990 served as a sharp reminder to the Saudis that they were in need of an external protector. But the Saudis were nervous about the presence of U.S. troops on their soil and about the rise of Islamic radicalism and the inability of the United States to deal effectively with Saddam Hussein during the 1990s. The problem was exacerbated, in Bronson's view, by King Fahd's growing incapacity from 1995 onward.

Bronson notes that the Saudis did not have much use for the administration of Bill Clinton—she describes the relationship as "in tatters" by 2000

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(p. 231)—but she does not mention the oft-told story of the Saudi Ambassador to the United States, Bandar bin Sultan, telling Palestinian Liberation Organization leader Yasir Arafat to turn down Clinton's peace proposals in late 2000 because he could get a better deal from the incoming George W. Bush administration. If true, as I believe it is, this shows how little the Saudis understood American politics. Ignorance of one another's most basic political realities has been a regular feature of the U.S.–Saudi relationship.

Bronson does a quick and businesslike review of the crisis opened by the September 11 terror attacks, the slow Saudi response to American demands for cooperation and information, and the eventual assertion by Crown Prince—now King—Abdallah of greater control over Saudi policy. She ends on a fairly hopeful note that the two countries are back on track. However, writing when the price of oil was about $35 per barrel, Bronson warns that if prices were to rise dramatically, say to $100 per barrel, both the international economy and Saudi Arabia's own economic interests would be devastated (p. 250). With oil now approaching $80 per barrel, it is not so clear that she is right about Saudi self-interest in keeping oil prices in a more moderate range.

Having written a fine history and analysis of the U.S.–Saudi relationship, Bronson is tempted to end with policy prescriptions. While many of her suggestions seem reasonable, the pace of change in the Middle East is so rapid these days that such guidelines are actually of little value. Still, they do little to detract from an otherwise solid achievement.

WILLIAM B. QUANDT
University of Virginia

Immigration Phobia and the Security Dilemma: Russia, Europe, and the United States *by Mikhail A. Alexseev. New York, Cambridge University Press, 2005. 294 pp. $70.00.*

In this theoretically and methodologically sophisticated book, Mikhail Alexseev does an excellent job of synthesizing arguments from diverse literatures to draw creative and policy-relevant conclusions about a crucial global issue: prejudice and violence against immigrants. While the regression tables and occasional formal equations he includes in the text may be off-putting to non-academics, Alexseev defines his terms in simple and straightforward language, and explains why the statistics and models are important for developing and testing his arguments. The math is only a small part of the text, and should not dissuade general readers.

Alexseev's major argument is that the "immigration phobia" often found among majority populations is based on the same structural and psychological logic underpinning the famous "security dilemma" of international relations.

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People see immigrants, who are by definition outsiders, as unknown actors whose intentions and capabilities are uncertain. If they doubt the ability of an outside authority (in this case, their own government) to effectively control the behavior of these outsiders—in other words, if they believe they are facing anarchy—then citizens will react with fear and hostility, assuming for the sake of self-protection that the outsiders are threatening and need to be stopped. As a result, citizens may create a spiral of reactive hostility where none is warranted, since the immigrants may in fact be not only well intentioned, but contributing importantly to the host country's economy and society. Alexseev contends that this is the same kind of spiral behavior reflected in an arms race between two nation-states who are actually only interested in maintaining their own defenses, rather than in gaining territory at each other's expense. Worst-case thinking leads to mutual perceptions of threat and mutual hardening of behavior.

This is an interesting new application of political scientist Barry Posen's argument that security dilemma patterns help explain ethnic conflict. But Alexseev goes beyond this, drawing on a wide variety of sociological and psychological literature to provide a nuanced understanding of how people treat immigrants. He notes, for example, that the true number of immigrants is less relevant in provoking hostility among a country's citizens than are perceptions about the country's own institutional weakness, or about the immigrants' group cohesion, both of which might make them seem relatively stronger in comparison to host-country natives. He uses this insight to refute the logic of political scientist Samuel Huntington's recent claims that Latino immigration threatens U.S. national security. He also notes that in contrast to how the security dilemma is defined in international relations theory, citizens seem less concerned about relative economic gains—how one group fares in comparison to another—in regard to immigrants, than they are about their own absolute prosperity in comparison to a time before immigrants arrived on the scene. This latter point will be particularly interesting for other scholars to take back to the international security literature, since, as Alexseev notes, it suggests that relative and absolute gains are not the polar opposites that many international relations theorists suppose.

What is particularly interesting is that Alexseev finds strong support for these arguments across three very different cases—fear of Chinese immigration in the Russian Far East, fear of Turkish and other immigration from the south in the European Union, and the case of ethnic tension and rioting provoked by the Rodney King case in Los Angeles. While he notes that few policies can easily undo the security spiral once it evolves, he concludes that officials at all levels of government should avoid using the language and symbols of national security to deal with immigrant issues, in order that fear and hostility can be contained.

KIMBERLY MARTEN
Barnard College, Columbia University

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Cousins and Strangers: America, Britain and Europe in a New Century
by Chris Patten. New York, Times Books, 2006. 320 pp. $26.00.

The title of the UK edition of this book is more apt—*Not Quite the Diplomat: Home Truths about World Affairs.* This is no retirement memoir from an out-to-grass politician but a warning signal about the state of Britain, Europe, and the transatlantic relationship from a public intellectual and international statesman who, in his spare time, doubles as Chancellor of Oxford University and co-Chairman of the Board of the International Crisis Group. The book sparkles with wit and flows with a calm and circumspect wisdom as Chris Patten delivers his trenchant verdict: on the English conviction that the world's problems start at Calais; on the chronic sickness of the Conservative Party he once chaired; on Tony Blair, the poodle-like "victim of his own interpretation of the special relationship" (p. 132); on Europe as an engine of transformation; on "market-Leninism"(p. 246) in China; and on Islam. Patten wears his conservatism, his Catholicism, and his limitless humanity on both sleeves. Conservatives, he tells us, have traditionally prided themselves on being "wise if slow-witted" as opposed to "clever and silly" (p. 78). He is disturbed by the inability of his party to understand sovereignty ("a notoriously slippery idea" [p. 81]), particularly the difference between de facto and de jure sovereignty—the source of their misunderstanding of the European project. He considers that Margaret Thatcher's Bruges speech in 1988 "destroyed at a stroke the traditional British relationship with Europe" (p. 93) and infused the Conservative Party with a "nightmare vision" (p. 93) of Europe that still prevails. Some analysts believe that in moving to Brussels as External Affairs Commissioner in 1999, Patten "went native." He didn't. His view of the European project is as complex as the man himself—but ultimately positive. His plea is for the EU to "turn the tolerance of diversity in an open society into a bond far tighter than cultural introversion and the exclusion of difference" (p. 165). Turkey is the acid test. Patten believes in Turkish membership, because Turkey "is European" (p. 161) in offering the prospect of bridging the gap between civilizations, and because the EU needs to demonstrate openness in order to win the battle for tolerance with its own Muslim populations in Amsterdam and Manchester. He believes that the next chapter in the European story may well be written in Istanbul (p. 165).

But this book is, above all, about the United States. It is perhaps the America of George W. Bush that bothers Patten the most. His loathing for the neo-conservatives knows no bounds: "fire and sword, shock and awe [and] dangerous to all of us because, in Edmund Burke's famous phrase, 'a great Empire and little minds go ill together'" (p. 226). He confesses to never having found himself disliking Bush the man, "however much I disagreed with what he was saying," but his dislike of Vice President Dick Cheney is visceral (p. 28). His message to America is clear: it must somehow turn its back on the seductions of singularity and return to the internationalist values of Woodrow

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Wilson, George Marshall, and Dean Acheson. The unilateralism, bellicosity, and tragic errors of the Bush administration are dissected with forensic care: he believes "not that the unilateralist urge is wicked but that it is ultimately ineffective and self-defeating" ("Jaw Jaw not War War," *Financial Times*, 15 February 2002). Patten was one of the first to speak out against the drive to war in Iraq. "True friends," he wrote at the time, "are not sycophants." They have a duty to speak up. This book is, to a large extent, an impassioned discourse to the America that for most of Patten's lifetime was "an education to the world ... a living lesson, a paradigm to which others could aspire" (p. 293). He hopes that "Europe can help America to be that again" (p. 293). Patten makes the case with impassioned sophistication—and in the teeth of a growing consensus among international relations experts that the twin 9/11s (9 November 1989 and 11 September 2001) have changed the United States forever.

JOLYON HOWORTH
Yale University

Bordering the Future: The Impact of Mexico on the United States *by John A. Adams. Westport, CT, Praeger Publishers, 2006. 184 pp. $39.95.*

For decades, Mexico and the United States tried hard to ignore their common destiny. The United States did not need Mexico, and Mexico endeavored to build a national life away from the United States. But as the United States has become a smaller part of the world's economy since WWII, it has naturally turned to its neighbors as one way to strengthen its geostrategic position vis-a-vis its increasingly formidable competitors, from Japan to Europe to China. In 1989, the U.S.–Canadian Free Trade Agreement was one step in that direction—an easy one, given the cultural similarities between the two countries. Since 1994, Mexico and the United States have also come to accept the benefits of economic integration, in spite of their cultural differences, their historical scars, and the many thorny issues in the relationship, from illegal drugs to undocumented immigration to the lack of systematic mechanisms for cooperation.

In view of the increasing interdependence between Mexico and the United States and their complex, multi-layered relationship, *Bordering the Future* is a book title that grabs the reader's attention. Its subtitle, *The Impact of Mexico on the United States*, further draws the reader into opening the book. It promises to deal with one of the greatest problems of the turn of the twenty-first century: the complex dynamics of the relationship between the United States and its only other neighbor besides Canada, Mexico. Indeed, it promises to explore what amounts to a still reluctant partnership.

Nevertheless, as one moves through the pages, one quickly realizes that the value of this book does not reside in any theoretical contributions to the

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study of development, regional economic integration, globalization, or the binational issues between Mexico and the United States. And it probably does not really claim to make such contributions. Instead, the value of the book consists in its descriptive nature. Number by number, acronym by acronym, year by year, statistic by statistic, the book weaves a scenario that sheds light on the major problems facing Mexico today.

But drawing conclusions about Mexico's current pressing needs, one fact at a time, is only half of the book's promise. This half it does very well. The other half of the promise, starting with its subtitle, is to draw important conclusions about the impact that Mexico has had and will have on the United States. On this score, the book fails. Although the reader learns vastly about the challenges that await Mexico in the coming decades, the actual impact of Mexico's choices on the United States and its people's well-being is never fully developed.

The most interesting and enlightening chapter is *Mexico versus China*, where the reader is led through the geostrategic position of each country and the potential for harm to the Mexican economy with China's entrance onto the world stage. Still, the author does not fully triangulate the relationship with the United States by elaborating further on the interaction between the two countries and on what Mexico's choices may mean for the United States. Thus, even this fascinating chapter illustrates how the book falls short of its promise to draw conclusions about the impact of Mexico on the United States.

The book is quite readable for an undergraduate class and the general public. It contains information and statistics couched in a historical perspective. Students and general readers who want to know the basics of Mexico's economic and political environment today, its perils, challenges, and opportunities, will be enlightened by reading it. More advanced readers who expect a more sophisticated analysis of and policy prescriptions on the U.S.–Mexico relationship will be disappointed.

TONY PAYAN
The University of Texas at El Paso

The End of Iraq: How American Incompetence Created a War Without End *by Peter W. Galbraith. Riverside, NJ, Simon & Schuster, 2006. 272 pp. $26.00.*

Part memoir, part political diatribe, and part current history, Peter Galbraith's critique of the effort to bring democracy to Iraq is complex, discouraging, and not entirely consistent. In Galbraith's view, Iraq was held together by the sheer brutality of Saddam Hussein and his henchmen. By crushing the Ba'athists, the George W. Bush administration unleashed ethnic and religious forces that had been suppressed for decades. The administration might be forgiven for hoping for a more positive outcome in Iraq, but Galbraith, an American with

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some unique experience with Kurdish military and political leaders, expected the worst. Much in the same way the collapse of the Soviet Union prompted Yugoslavia's descent into ethnic violence and civil war, the end of the Ba'athist regime in Baghdad has led the Kurds, Sunnis, and Shiites of Iraq to look to their own interests first. Galbraith believes that civil war in Iraq is all but inevitable, if not already well under way. U.S. forces will not be able to hold Iraq together: too much blood has been shed in ethnic strife and political repression for the peoples of Iraq to live together.

Although Galbraith blames this state of affairs on Republican administrations, he never offers a compelling alternative for ending the brutal dictatorship in Baghdad. He speaks glowingly about the U.S. containment of Iraq practiced during the 1990s, but the status quo did in fact come at the price of many thousands of Iraqi lives every year, the further exacerbation of ethnic and religious animosities within Iraq, and a fundamentalist backlash against the United States (that is, al Qaeda). Galbraith also takes the Bush administration to task for not only disbanding but humiliating the Iraqi military, while also offering the seemingly contradictory judgment that it was impossible to continue to allow the Iraqi military to be dominated by Sunnis loyal to the old regime.

According to Galbraith, the idea of creating a multi-ethnic, liberal democracy in Iraq was never embraced by most Iraqis. The Kurds had long ago opted out, the Shia desire a theocracy, and the Sunnis, now that the tables have turned, live in fear of becoming political and religious underdogs in Iraq. Better military tactics, strategy, or even diplomatic prowess, or the lack thereof, was not going to change the situation on the ground in Iraq. Given Galbraith's analysis, it is hard to escape the feeling that his Bush bashing is really beside the point.

Galbraith believes that U.S. policymakers must accept the fact that Iraq will inevitably disintegrate into Kurdish, Sunni, and Shia enclaves and adopt policies to facilitate the separation of Iraq into its constituent parts. He also suggests that the time has come to pick allies—his preference is to strengthen the already positive U.S. relationship with the Kurds—to better prepare for the time when Iraq no longer exists. U.S. policymakers also have to begin to worry about the geo-strategic consequences that will follow the disintegration of Iraq. Iranian power and influence are likely to surge in the absence of an Iraqi counterweight, a development that might drive a wedge even deeper between Sunnis and Shia, and draw the United States even more deeply into Middle East politics.

The *End of Iraq* offers a Machiavelian perspective on the future of Iraq, if not a sustained analysis of Bush administration policy making or the trends that are shaping events in the Middle East. And despite all the criticism Galbraith heaps on Republicans, his fundamental point, which has nothing to do with partisan politics, offers a sufficient explanation for the turmoil in Iraq today. The various ethnic groups that populate Iraq will not and cannot live together. If his central thesis is correct, it is hard to

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reject his idea that the best way to end the war in Iraq is to expedite the country's dismemberment.

JAMES J. WIRTZ
Naval Postgraduate School

Executive Orders and the Modern Presidency: Legislating from the Oval Office *by Adam L. Warber. Boulder, CO, Lynne Rienner Publishers, 2005. 175 pp. $49.95.*

The capacity of presidents to "legislate" by issuing executive orders, proclamations, and other administrative instruments has been the subject of close scrutiny in recent years. Kenneth Mayer's *With the Stroke of a Pen* (Princeton, NJ: Princeton University Press, 2001), Phillip Cooper's *By Order of the President* (Lawrence: University Press of Kansas, 2002), and William Howell's *Power Without Persuasion* (Princeton, NJ: Princeton University Press, 2003) have all analyzed the president's power to use executive orders. Adam Warber contributes to this literature by offering an empirical study, analyzing the text of all executive orders from March 1936 through the end of the administration of Bill Clinton. He also provides an assessment of executive orders during the first term of George W. Bush.

Warber separates executive orders into three categories: symbolic, routine, and policy. He studies their use during divided government, scandals (Watergate and Lewinsky), and a president's last year in office, and compares the orders issued in election and non-election years. Contrary to some other studies, he finds that "there has not been a significant expansion of power across the modern presidency regarding the chief executive's authority to issue executive orders" (p. 2), and that presidents "have not dramatically expanded their power with this unilateral tool" (p. 128).

A reader may draw the erroneous conclusion that the significance of executive orders is not growing. Looking at total numbers, there has been no significant increase, but executive orders are being used more frequently for policy purposes. From the administration of Franklin Roosevelt to that of John Kennedy, the percentage of policy executive orders ranged from 22.2 percent to 38.8 percent, or an average of 25.7 percent. That percentage increased to 42.8 percent from the administration of Lyndon Johnson to that of Gerald Ford, and climbed still further, to 65.6 percent from the administration of Jimmy Carter to that of Bill Clinton (p. 39). Also, Warber makes clear that presidents are at liberty to issue executive orders with little fear of legislative or judicial checks. Without pushback from other branches, executive orders remain a potent weapon.

In several places, Warber seems to equate executive orders with public laws, as in "Since executive orders are law … " (p. 15) and "The US political system accords executive orders the same legal status as legislation passed by Congress" (p. 31). Executive orders do have legal effect, but they are not

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an alternative form of statute. Law is still made by Congress, and it can by statute delegate to the president and to executive officers the authority to put a program or policy into place. Executive orders serve that purpose. Warber writes that executive orders are efficient tools because the president need only sign them "to enact them into law" (p. 38). That sounds like the president is signing a bill into public law, but the differences between statutes and executive orders are fundamental. A congressional statute can amend or repeal a previous statute. An executive order cannot, unless Congress has given the executive branch that discretion in a prior statute. A statute can create criminal offenses, authorize programs, and appropriate funds. An executive order cannot. The Supreme Court struck down Harry Truman's executive order to seize the steel mills. Congress could have authorized the seizure by statute.

When presidents issue executive orders, they cite a combination of statutory and constitutional sources. Warber concludes that most administrations have "cited the power of the president as the main source of authority to legitimize policy orders" (p. 92). Presidential power under Article II does not automatically translate into exclusive authority. If the power is that of Commander in Chief, the president can argue for some level of independence. Other constitutional powers, however, make the president subservient to Congress and public law; for example, under Article II, it is the president's duty to "take care that the laws be faithfully executed."

LOUIS FISHER
Library of Congress

The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11 *by John Yoo. Chicago, IL, University of Chicago Press, 2005. 378 pp. $29.00.*

John Yoo is a scholar and policymaker, historian, and deputy assistant attorney general, uniquely qualified to prepare a major treatise on the law of war and peace. Perhaps because he wishes not to be known as primarily "a servant of presidents," he hastens to explain that he had begun working on the book before he left for Washington.

On arriving in Washington, his assignment was to join others in preparing an outline of President George W. Bush's legal policies for the war on terror. Anyone wishing to assess the legality of the Afghanistan or Iraqi invasion must first explain the scope and character of the president's powers as Commander in Chief. In judging whether the Geneva Conventions apply to terrorists, one must engage in "unpacking the Constitution's allocation of the power to interpret treaties from among the president, Senate, Congress and the courts" (p. vii). Failure to adopt this approach would be like arguing about the government's position on free speech without recognizing principles enshrined in the First Amendment.

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Many writers have been critical of the U.S. military and its interventions, especially during and after the Cold War. They have identified an intrinsic judicial role that holds the presidency within restricted boundaries. Among the writers to whom Yoo pays tribute are Quincy Wright, Thomas Francke, and Lou Henkin. Quincy Wright and Thomas Francke paid attention to the connection between political and legal issues, with Francke accusing presidents of waging unconstitutional wars. Henkin and Wright discuss the interchangeability of treaties and statutes. Yoo, in shaping his theory, goes back to the Constitution of the eighteenth century, to its British roots, the first state constitution, and the drafting and ratification of the U.S. Constitution in 1787 and 1788. What we learn from these developments is that the Constitution as it has evolved depends less on fixed legal processes for decision making and more on the interaction of the executive and legislative processes. Because the Constitution allocates different powers to the president, Senate, and Congress, they each have shaped different processes to meet the demands of the international scene and its political importance in relationship to the law. The Constitution does not require a single, correct method for enforcing international law; rather, it allows the parties to compete or cooperate in foreign affairs by relying on their unique contributions.

Yoo proposes a comprehensive theory that differs from conventional academic wisdom. He recommends for study the interpretation of 200 years of treaties, including the 1778 alliance with France, without which we could not have gained our independence. It led to the heated debate between Alexander Hamilton and Thomas Jefferson, followed by George Washington's neutrality proclamation concluding that our entry into the Napoleonic wars was not required.

Yoo goes on to explain that in chapter 5, he will address war powers. Chapters 6 and 7 apply to the making and keeping of the peace, whereas chapter 8 explores the relationship between law making and treaty making. Then, unexpectedly, in chapter 9, he departs from the judicious manner in which he has introduced his theory about the founding and early practice. He becomes so passionate in this latter stage that I find him more an advocate than an analyst. While there had been hints he might move this way, his condemnation of American thought and practice in the 1930s and 1940s lays him open to criticism for abandoning his political objectivity.

KENNETH W. THOMPSON
University of Virginia

First Person Political: Legislative Life and the Meaning of Public Service *by Grant Reeher. New York, New York University Press, 2006. 204 pp. $21.00.*

This book arises from Grant Reeher's worry about the persistent decline in recent years of the reputation of state legislators and the places they work.

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Skepticism about politics and politicians, Reeher knows, is deeply embedded in the design of American institutions. But it has lately been unduly reinforced, he thinks, by reactions to the influence of big-money interests on campaigns for office; the rampant negativity, incivility (and sometimes downright ignorance) in public discourse about state politics; and the misleading dominance of "microeconomic theories" emphasizing utility maximization in academic analysis of legislators and legislatures. The author's explicit goal is "to help counteract the particularly negative view toward elected politicians and in that limited sense contribute toward a shift to rehabilitating *the political*..." and in doing so, to provide "a measure of *respect* for and a sense of the *dignity* of elected office" (pp. 18, 19, italics his). He seeks to do this by learning directly from those serving why and how they got to the legislature, what they experienced as legislators, and why they decided to stay or to leave office.

In 1994 and 1995, Reeher spent time and conducted long, relatively unstructured interviews, mostly face to face, with members of the lower legislative houses in New York (30), Connecticut (21), and Vermont (26). Additionally, he achieved a 52 percent response rate (233 members) to a 1994 survey of all serving in those three states' lower houses. The author reports, but does not demonstrate, that interviewees were selected to be representative of the members in the chambers in which they served across a range of demographic, political, and career characteristics. A decade later, he followed up in long phone interviews with twenty-three of his interviewees; it is not clear whether this sub-sample remained representative. The result is a qualitative analysis based largely upon very rich interview materials, quoted at length. (Some summary descriptive statistics are provided in the text from the 1994 survey, almost always without tabular detail.)

Reeher finds that state legislators, often from politically oriented families, are people deeply rooted in their communities. Their careers, he writes, have benefited from a "favorable alignment of personal and professional circumstances" (p. 60) and are largely motivated by "an overall concern with the public good" (p. 59). Members are people who enjoy the challenge, pace, energy, and communal quality of legislative life and who value the ability that their role and status give them to get things done, both for constituents and in the larger political arena. But members have far too many demands on their time. Their paths depend in often-unpredictable ways upon the timely convergence of political and personal circumstances. Although many stay, seeking leadership and gaining continuing satisfaction from the work, and some are attracted to other offices, the personal costs they and their families pay for their service, especially during campaigns, induce many to leave, especially in Vermont's low-paid citizen legislature.

Other than the author's own previous work, I found little serious consideration in this volume of writing on the politics of the states from which the author's sample was drawn. Greater familiarity with this literature—for example, on the importance of the town meeting as a defining experience in

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Vermont political life—might have provided an enriched context for this analysis. To cite another example, dissatisfaction with New York's entrenched legislators is not driven entirely by editorial pique. Rather, it arises from failure on their part to insist that the legislature in Albany function as the deliberative institution it was designed to be. I like legislators, too. (I used to be one, albeit at the local, not the state level.) I really value legislatures. And I love legislative life. In *First Person Political*, we have some good stories here about all three. But not, I am afraid, a convincing systematic case, built on a strong evidentiary base.

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Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic *by Alan Gibson. Lawrence, University Press of Kansas, 2006. 174 pp. Cloth, $35.00; paper, $15.95.*

It should be no surprise that later generations of Americans would seek to understand the reasons that animated the nation's founding, nor that after an initial period of hagiography, the debunkers would march to their own several drummers, debunking each debunker in turn. The student of American and intellectual history who now, after the twentieth century has closed, wishes to understand these debates would be well advised to travel with a guide, and Alan Gibson's short work is admirably suited to the purpose. In 100 pages of text and an additional 63 pages of bibliographic notes and brief annotations, Gibson provides a map of the terrain from, in the argot of our age, a medium-zoom perspective.

He identifies six major themes that have emerged from the researches of, mostly, American academic historians. First, the progressive interpretation: that the explanation is to be found in the economic interests of the Founders, not in their professed beliefs. Second, the liberal tradition: that practices that would instantiate the Lockean premise that men are created equal, possess inalienable natural rights, and are motivated by passions and interests, require a regime to which all consent and that will provide security and stability and promote prosperity. Third, the republican synthesis: that ideology "mediates between individuals and social phenomena" (p. 23) and that the transformation of classical civic humanism from Florence through England to the colonies accounts, far better than materialist and idealist explanations, for the rebellion needed to restore virtue and the public good. Fourth, the Scottish conversation: that the ideas of the eighteenth-century Scottish enlightenment were absorbed by the Founders as the basis of much that they wrought, particularly "a social scientific approach to politics" (p. 39), an evolutionary approach to the development of peoples from primitive to commercial

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societies, and a commonsense or "moral sense" philosophy that "made moral knowledge equally accessible to the professor and the ploughman" (p. 42) and eliminated the authority of specialist theologians. Fifth, the multiple-traditions approach: that "liberalism, republicanism, and other interpretative constructs are at worst labels and at best" simply analytical means of simplifying the complex reality of the founding and that the Founders combined "different traditions of political thought" (p. 53), including republicanism as a species of liberalism or as a non-rival combination of political idioms, which may or may not have yielded a coherent outcome. And sixth, a multiplicity of Founders: that the American founding was not exclusively the work of an elite group of statesmen, so that the ideas of and problems presented by women (the "republican mothers"), Native Americans (the "forest republicans" and the "Iroquois influence thesis"), and slaves cannot be ignored in understanding why the founding, especially in constitutional terms, looks as it does.

Each is a complex thesis, and none is the work of any single author. Gibson rehearses the broad outlines of the evidence and arguments that the leading proponents of these theses have presented. His narration includes the responses that various historians have made to the other traditions. Because Gibson succeeds in delivering a concise view of the terrain, he deliberately avoids shining a light on much more specific points on the map (although he oddly devotes three pages to a review of the Jefferson-Hemings controversy). All this may be familiar territory to specialists, but anyone else interested in the enduring questions that the founding poses will want to enter the grounds with Gibson's map in hand.

JETHRO K. LIEBERMAN
New York Law School

The Defining Moment: FDR's Hundred Days and the Triumph of Hope
by Jonathan Alter. New York, Simon & Schuster, 2006. 432 pp. $29.95.

Commentator and *Newsweek* editor Jonathan Alter justifies this new biography of Franklin D. Roosevelt with an ambitious question: given that the Depression offered an unprecedented opportunity for a popular leader to seize dictatorial powers, what combination of temperament and experience explains why Roosevelt saved capitalism and democracy and "blunted the potential of both fascism and communism at home" (p. xv)? The book offers little new scholarship, but that is not its point. Rather, in explaining that he wanted to investigate the nature of crisis leadership, Alter invites comparisons between his subject and the quality of national leadership since September 11. FDR, the author contends, rejected a militaristic response to the emergency and instead maintained faith "in the capacity of democratic institutions to confront the terror of the unknown" (p. 8). The book is clearly aimed at the

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concerned general reader curious about the personal background and political skills of a president who offered Americans a new social contract and successfully navigated a national crisis.

In tracing the development of Roosevelt's political philosophy, Alter takes pains to dispel any notion that FDR long nurtured a robust liberal sensibility. He first examines formative episodes that equipped FDR with less idealistic but equally potent qualities. Managing strong-willed family members endowed the future president with useful manipulative skills; facing down Al Smith and the Tammany Democrats provided boosts of street-smart confidence; and a stint in Woodrow Wilson's sub-Cabinet provided useful lessons in bureaucratic maneuvering. Most important, a doctor's initial mishandling of his polio attack left FDR with a healthy mistrust of expert opinion, and his subsequent work with fellow polio victims at Warm Springs sparked a newfound desire to assist those in need. Combined with a dash of humor and a dose of the theatrical, these qualities blossomed into Roosevelt's famous (and often infuriating) flexibility, his communicative panache, and his willingness to experiment with daring yet hardly radical government action in the face of economic disaster. Before arriving at the Hundred Days and its dizzying array of legislation, Alter also examines the onset of the Depression, FDR's time as governor of New York, the campaign of 1932, and the tense period between the election and the inauguration when conditions worsened and Roosevelt strategically dodged Herbert Hoover's repeated requests for economic cooperation.

Still, it is surprising that such a generally uncritical assessment of FDR would consistently underrate the President's intellect. The argument is made that FDR never really embraced any serious political commitment, indeed any guiding political theory at all, only the inclination to act and to use the instruments of governance to provide a measure of security against the market. For Alter, this largely explains the ineffectiveness and haphazard character of the early New Deal legislation, which emerged from a failure to imagine the renewal of economic growth and the possibilities of an expanding pie. But the fact is that for all its absence of Keynesian-style pump priming, the early New Deal did exhibit a certain theoretical consistency: if one believed that the absence of purchasing power among farmers and workers precipitated the downturn and prevented recovery, then the solution might lie in policy that attempted to adjust the economic relations between groups (something that did not necessarily require an expanded budget but rather a redistribution of existing power and income). There is much evidence to suggest that Roosevelt not only grasped such ideas, but also helped to formulate and popularize them. A more accurate portrayal of FDR, and of the qualities required for successful presidential leadership, might also have recognized Roosevelt's own developing talent for policy formation and his knack for balancing pragmatism with idealism.

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Committee Assignment Politics in the U.S. House of Representatives
by Scott A. Frisch and Sean Q. Kelly. Norman, University of Oklahoma Press, 2006. 412 pp. $55.00.

Charles Brown, a Democrat representing the first district of Pennsylvania, refused to support a resolution thanking the retiring Speaker for his service. In the previous round of committee assignments, Brown had been taken off a panel with jurisdiction of direct relevance to his constituents and placed on another with little to none. Explaining his breach of decorum, Brown told the House that the people he represented "had interests, and they had a right in some way or other to have them represented in this House" (*Congressional Globe*, Washington DC, 1843). In his view, his committees were central in fulfilling that responsibility. Perhaps in retribution, next time, Brown got no assignment at all.

It was 1843, more than a century before *Committee Assignment Politics* begins. I offer this story, despite the disparate eras, to illustrate the contention of Scott A. Frisch and Sean Q. Kelly that the assignment process in the U.S. House is characterized by a complex interplay of interests. They start with the common premise that committees are the engine of congressional policy making, and that we cannot understand committees without understanding who sits on them. The greatest contribution of this book is the wealth of data collected by the authors. Committee assignments depend on a variety of factors beyond the preferences of the legislator seeking a seat, and so the authors argue that research based on assignment outcomes misleads. They peel back a layer to examine the requests of legislators and the process parties use to turn requests into assignments. Unlike past studies, which are limited to one party and a handful of congresses, they draw on four decades of archival records from both parties.

The authors uncover a variety of findings to challenge conventional wisdom. Legislators exhibited a mix of interests beyond simple electoral self-interest in the committees they requested and in the language they used to justify those requests. Leaders had leverage to influence some outcomes, but lacked sufficient power to win every battle. State size, region, seniority, ideology, intra-party coalitions, party loyalty, gender, race, electoral marginality, and issue expertise all played a role in assigning representatives to committees.

The abundant and diverse findings come at a cost. As they observe in their conclusion (p. 337), the authors chose explanatory breadth over theoretical parsimony. In other words, everything matters. It seems the only factor omitted from a flowchart on page 16 is whether members have neighboring lockers in the House gym. A virtue is that their approach gives the most complete picture of the committee assignment process. The handicap is that without guidance from theory about which factors matter, we struggle to generalize beyond the modern House. Even with respect to the House, the analysis has two shortcomings. First, the authors treat requests as revealed preferences over

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seats. They fail to explore, however, how much the requests are conditional on opportunities. They mitigate much of the selection bias problem by looking beyond assignment outcomes, but have not accounted for all such bias. Second, due to limitations in the available data, they lack post-1994 requests. Consequently, nearly all of the analysis concerns majority Democrats and minority Republicans, confounding party-specific differences and majority status.

Despite these concerns, the authors do an invaluable service for scholars of legislative institutions. They had an enormous data-gathering task, and our understanding of congressional institutions is deeper for it. Those who study committees benefit, as do those who study gender and race, party power, and the relationship between constituency interests and legislative activity. When it comes to theory and formal models, congressional scholarship has an embarrassment of riches. Frisch and Kelly have enriched the empirical knowledge on which to test our theories.

JOHN BAUGHMAN
Bates College

Countervailing Forces in African-American Civic Activism, 1973–1994 *by Frederick C. Harris, Valeria Sinclair-Chapman, and Brian D. McKenzie. NY, Cambridge University Press, 2006. 184 pp. Cloth, $55.00; paper, $19.99.*

As the civil rights and black power movements recede further into the past, historians of the period have written the first two waves of scholarship since the 1970s, chronicling everything from leaders to local and national organizations to strategies. Concomitant efforts to understand black politics in the post–civil rights period as part of a growing political science literature have likewise mushroomed. The fundamental question that seems to be lurking in the black politics literature is: what effect did the civil rights movement have on African Americans? Perceived by the general public as a positive force in producing racial advancement in the form of rendering Jim Crow a policy death, the movement's consequences have come under greater scholarly scrutiny, putting this perception up for debate. Although this question is not central to *Countervailing Forces in African-American Civic Activism, 1973–1994*, this timely text not only synthesizes the arguments of recent black politics scholarship, but also provides a tremendous amount of insight on this very question.

Simply stated, Frederick C. Harris, Valeria Sinclair-Chapman, and Brian D. McKenzie argue that there is a connection between black political empowerment or black civic participation and social and economic distress. In other words, the authors contend that the poorer African Americans are (unemployment, income, welfare levels), the less educated they are, and the more they are the victims of crime, the less likely they are to partake in the

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political process (vote, join organizations, rally, and others types of civic activism). Harris, Sinclair-Chapman, and McKenzie also argue the converse: African Americans with higher incomes and higher levels of education will have greater involvement in the political process, thus their emphasis on the notion of "countervailing forces." "Our theory maintains that empowerment and distress have opposing effects on black civic participation, either pulling black participation upward, in the case of empowerment, or pushing black participation downward, in the case of distress" (p. 94). Although the book addresses both sides of the equation by locating both downward and upward shifts in black civic behavior, it is the disturbing downward trend that weighs heavily in the authors' analysis.

In many ways, the book's greatest strength is not so much the overall argument, but the way in which the authors marshaled the evidence to support their argument. An aggregate macro-level approach is taken to examine countervailing forces in African American civic activism, and to ascertain how class divisions have curtailed black participation in the democratic process. Not only do the authors go beyond measuring individual behavior, they take issue with past studies in black politics that have used individual behavior as a reflection and explanation of some larger group process in black America. In most American politics literature, they posit, "micro-level evidence is used to make claims about macro-level behavior" (p. 56). What they see as a flaw in American politics literature as a whole must be countered with a methodological collectivist approach that avoids analytical leaps "about the collective political behavior of blacks based on individual assessments ... " (p. 55). Using data such as the Roper Social and Political Trends to create statistical aggregation models, re-evaluating the Gini index, and creating new generalized least squares models, the authors are able to take macro-level indicators like black college enrollment, black income inequality, black unemployment figures, inflation and immigration rates, and the percentage of black crime victims and assemble them all in a new explanatory and descriptive framework.

The conclusion the authors arrive at cannot be gainsaid. If African Americans had a more visible presence on the local, state, and national political landscape by the end of the twentieth century, then what are the reasons for the lack of political equality? The answer to the question is an understanding of how economics and politics are endemically tied to one another. The authors offer up their assessment—sobering, yet poignant—of black group advancement in the post–civil rights period: "Our study reveals that political equality in the absence of economic equality may be an elusive goal for all African-Americans, but particularly for poor African-Americans whose levels of participation in civic life have not been activated by the presence of black elected officials" (p. 146).

KEITH A. MAYES
University of Minnesota

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The Future of Organized Labor in American Politics *by Peter L. Francia. New York, Columbia University Press, 2006. 224 pp. $40.00.*

Organized labor's current crisis is undeniable. The ranks of union workers have continued to erode, from the mid-1950s high point, when 35 percent of wage earners were organized, to the present, when barely 12 percent claim union membership. Yet, as Peter L. Francia convincingly demonstrates, in the face of this crisis, labor has become an increasingly adept and effective vote-mobilizing force. Especially in the decade since John Sweeney took over the AFL-CIO presidency, labor has redoubled its political efforts and has developed an increasingly proficient electoral apparatus. This is a backstory to organized labor's current troubles that few observers have grasped as well or analyzed as astutely as Francia does in this fact-packed volume.

As Francia makes clear, labor's renewed focus on political action was necessitated by the election of anti-labor Republicans to the control of Congress in 1994. That political earthquake set in motion a series of changes within organized labor. Indeed, the Republicans' seizure of Congress was largely responsible for Sweeney's victory in the first seriously contested presidential election in the history of the AFL-CIO in 1995. Once Sweeney took the reins, labor's effort to restore Democratic control of Congress forced unions to become increasingly partisan and to perfect their political action accordingly. The result has been a dramatic improvement of labor's political operations.

Francia evaluates labor's political record in the Sweeney era according to several criteria, including the efficiency of campaign spending, the extent to which union members vote Democratic, labor's success in keeping Democrats loyal, and labor's ability to increase the share of voter turnout that comes from union households. Under Sweeney, Francia shows, labor targeted campaign contributions more shrewdly, made labor a powerful force in electing Democrats to open congressional seats, and developed a get-out-the-vote operation that has given union households a larger share of all voters, despite union membership losses.

In many respects, the evidence that Francia amasses in this book vindicates Sweeney's political strategy. Yet, as Sweeney's critics within the labor movement point out, and as Francia acknowledges, labor's growing effectiveness in politics still has not made enough of a difference. The results of the 2004 election make this clear. Union households turned out 24 percent of all voters, and trended Democratic by a healthy two-to-one margin. Yet Republicans were still victorious. Indeed, Republicans have not only retained control of Congress, they have grown increasingly anti-labor as the number of moderates within the party has diminished. Meanwhile, increased corporate funding of political action has far outstripped labor's spending. Even more ominous, declining union density is eroding the base that labor seeks to mobilize politically.

Francia sees no easy solutions to such problems. For example, he quickly dismisses the notion popular among some observers on the left that unions

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should break with the Democrats and launch their own party. The structural impediments inherent in a winner-take-all two-party electoral system would doom such an effort, he argues. Moreover, he shows that labor's political problems stem more from the hostility of the ruling Republicans than from soft support among Democrats.

In the end, labor is facing what Francia calls a classic "'chicken-or-the-egg' dilemma" (p. 143). Unions need to organize more workers in order to increase their political clout. Yet unions need access to political power in order to reform outdated labor laws in ways that would make organizing easier. Francia does not pretend to resolve that dilemma in this slim volume. But he does a fine job of clarifying it.

JOSEPH A. MCCARTIN
Georgetown University

Congress and the Cold War *by Robert David Johnson. New York, Cambridge University Press, 2005. 380 pp. Cloth, $70.00; paper, $25.99.*

In his prologue, Robert Johnson cites Robert Caro's observation that "historians can explicate the role of procedural gambits in Congress only through precise, detailed descriptions of the tactics involved" (p. xxiv). Johnson takes this insightful statement to heart, and his book is clearly the richer for it. Covering a period of roughly forty years, Johnson chronicles the see-saw of competing ideological factions and competing political parties in the Congress, and their respective rise and decline in influence on U.S. Cold War policy. As Johnson makes clear, however, this influence was manifested not through dramatic applications of the Congress's war-making or treaty-approval powers. Rather, when the Congress was influential, that influence typically was achieved through back-door procedural gambits, most often associated with the legislature's power of the purse.

As Caro prescribes, Johnson presents this story through detailed explications of the various tactical situations in which the Congress acted. This approach is simultaneously both the strength of the volume and the stage set for its major flaw. For while these detailed recitations of minute legislative battles long past are essential to explaining how members of Congress exerted influence on Cold War policy, the reader ultimately gets lost in the details of struggles won and lost, and the author provides far too little explanation of each incident's significance for the underlying trends and its lasting significance, if any, for Congress's role in U.S. foreign policy in the current century. At the end of each chapter, for example, the author typically provides but a single paragraph summarizing the meaning of the history just recounted, and the book ends with a chapter describing the final episode in the history, rather than any kind of overarching summary and analytical discussion.

Johnson's focus on detailed recitations of procedural tactics has other consequences, as well. He often fails to get behind the legislative scene, neglecting

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the role of interest groups, intra-party politics, and personal ambitions. There is barely a mention, for example, of how presidential ambitions influenced the behavior of Democrats throughout the congressional ascendance during the late Vietnam period and during the Reagan era. Indeed, he states falsely that "few if any Democrats suffered political fall-out" (p. 286) from their opposition to the Gulf War, neglecting the widely accepted view that Senator Sam Nunn, once considered a leading candidate for the 1992 Democratic presidential nomination, withdrew from the race primarily because he recognized that his leadership of the opposition to what proved to be a popular and very successful war would greatly hamper his chances in the general election. Johnson also leaves out policies concerning whole regions, the Middle East, most notably, and issues, such as trade and immigration, because of the influence of domestic political interests—omissions that significantly short-change readers' understanding of congressional influence on foreign policy issues.

These flaws notwithstanding, this is a book well worth reading for anyone concerned about how U.S. foreign policy is made and implemented, and about the whys, hows, and wherefores of the shifting balance between the executive and legislative branches—not only during the Cold War but at the current time. The rich detail that Johnson presents makes the book hard going at times, but it is well worth staying the course. Johnson's nuanced appreciation for the various ways in which the Congress, or members thereof, have exerted their will, or attempted to do so, provides a far more sophisticated understanding of this important subject than is typically appreciated. One only wishes that Robert Johnson had explicated at greater length and more directly on the meaning of these procedural initiatives, sharing more of his knowledge and understanding with the reader directly.

BARRY M. BLECHMAN
Defense Forecasts International, Inc.

Democracy for All: Restoring Immigrant Voting Rights in the United States *by Ron Hayduk. New York, Routledge, 2006. 264 pp. Cloth, $95.00; paper, $24.95.*

In February of 1992, Takoma Park, Maryland, a Montgomery County suburb of Washington DC with a population of less than eighteen thousand, attracted national attention by allowing non-citizens, documented and undocumented, to vote in its local elections. What the public and many scholars probably do not realize is that for various periods during the nineteenth century, thirty-seven American states or territories included aliens in their electorates, and that today, forty-five countries allow at least some immigrants to vote in some elections. This book by Ron Hayduk, co-director of the Immigrant Voting Project, is the most comprehensive survey on the subject of immigrant suffrage in the United States, an issue that has been revived as the proportion of

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immigrants has grown since 1970 and the battles over immigrant rights have correspondingly escalated.

Fervently supporting non-citizen voting, especially in local elections, but nonetheless fully cataloguing the arguments on all sides, *Democracy for All* focuses on local campaigns for non-citizen suffrage in New York (in which Hayduk was a very active participant), San Francisco, and the District of Columbia, and much more briefly treats struggles in other cities and a few states. Based on obscure local records, interviews, policy papers, and newspaper articles, these interesting narratives comprise over half of the book.

Students of social movements, state and local governments, or public policy will fasten onto the discussions of strategies, tactics, and coalitions: How broad should proposals for non-citizen suffrage be? In particular, should the undocumented be included and should the vote be confined to school elections? Should the struggle for the ballot be integrated into larger campaigns for immigrant rights or kept separate from them? How should advocates approach state legislators, whose support is often needed to authorize local actions? How rapidly should suffrage expansion be pushed? For opponents of immigrant voting, the principal calculation is whether opposition will alienate voters from the immigrants' ethnic groups.

In the semi-decentralized American political system, in an age of easy transmission of information, actions on election laws are mostly local, but the arguments for and against changes are the same everywhere. Proponents of immigrant suffrage observe that because of complicated rules and understaffed agencies, naturalization often takes as long as a decade. They believe that those who are affected by public policy, particularly in regard to public schools, should be able to protect their interests by participating in the choice of policymakers. They conclude that prospective citizens should not have to wait to be able to influence decisions that may crucially impact them and their children, and they speculate that political participation will help assimilate newcomers into the community. In response, opponents of non-citizen voting, largely ignoring history, particularly the experiences with suffrage rights of African Americans, women, and many past immigrants, maintain that enfranchisement is by definition an attribute of citizenship, and they speculate that immigrants are insufficiently assimilated and too ignorant about American politics to vote in the best interests of the country. It follows, opponents assert, that it would be wrong in itself and bad for the political system in general if non-citizens voted. Both sides agree that immigrants would lean liberal and Democratic, and partisan/ideological motives are often visible in the debates.

Whatever the arguments, recent efforts to enfranchise immigrants have been unsuccessful, except in Takoma Park, where the expansion was led by Jamin Raskin, the leading scholarly proponent of non-citizen suffrage, on whose work Hayduk heavily relies. Although Hayduk is steadfastly optimistic, his study belies his hopes. The past of immigrant suffrage in the United States,

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a topic insufficiently studied by historians and skimmed over by Hayduk, may be more interesting than its seemingly bleak future.

J. MORGAN KOUSSER
California Institute of Technology

The President's Speeches: Beyond "Going Public" *by Matthew Eshbaugh-Soha. Boulder, CO, Lynne Reinner Publishers, 2006. 219 pp. $49.95.*

The number of speeches made by presidents has increased dramatically in the twentieth century. So too has the audience changed as presidents increasingly "go public" to advance their agendas. Scholars, however, have found these developments difficult to assess. Two prominent works have questioned the efficacy of presidential speech making from different perspectives. Jeffrey Tulis (*The Rhetorical Presidency*, Princeton, NJ: Princeton University Press, 1987) has raised doubts about the utility of rhetoric as a foundation for successful public policies under these conditions, whereas George Edwards III (*On Deaf Ears: The Limits of the Bully Pulpit*, New Haven, CT: Yale University Press, 2003) has argued that fewer and fewer Americans are even listening to speeches by presidents. Why, then, do presidents continue to attempt to govern rhetorically? Matthew Esbaugh-Soha attempts to resolve this conundrum by applying signaling theory to explain modern presidential speech making.

Signaling theory has been utilized in both the natural and social sciences to analyze behavior under time and information constraints. Esbaugh-Soha argues that despite the apparent limited support for their efficacy, speeches are major signaling devices that are used to inform and direct both Congress and the bureaucracy. Using a data set of presidential speeches derived from *Public Papers of the Presidents* (Washington DC: U.S. Government Printing Office, 2004), he focuses on three policy areas: civil rights, clean air, and agriculture and finds that presidential power derived from signaling is greatest when an issue is both salient and simple. Presidents have the most success, measured by congressional roll call votes and federal government litigation, in civil rights policy. In clean air issues, which are salient but complex, presidential power is more problematic, and in agriculture policy, which has low salience and high complexity, signals are "not a reliable tool for presidential influence" (p. 152). Ebsbaugh-Soha includes in his analysis an intriguing although underdeveloped consideration of the implications of his research for democratic theory, since the public is a bystander in the signaling process. This finding could pose a critical challenge to the approaches of both Tulis and Edwards.

While Esbaugh-Soha's approach is both systematic and inventive, these cases illustrate some of the difficulties with signaling research on the presidency. It is very arguable, for example, that civil rights is a "simple" policy area, as any student of redistricting and affirmative action can attest. Moreover, if presidential power in terms of signaling is so effective, why have the concerns of African

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Americans languished on the political agenda for long periods? A good deal of politics and policy on questions of race seem to be legislative and bureaucratic efflorescences of a brief moment of presidential success in the 1960s.

In broader terms, signaling as a research strategy imposes a series of constraints of which it is important to be aware. One of the basic premises of signaling is its focus on speech acts themselves and their repetition rather than content (other than positive or negative cues). Thus, for example, if one were to analyze Abraham Lincoln from a signaling standpoint, the effort would turn on the number and direction of his comments on civil rights. The Second Inaugural could be categorized as both a strong enforcement signal (slavery "having continued through His appointed time, He now wills to remove") and a lenient one ("with malice toward none, with charity toward all"). A comprehensive signaling approach to the presidency would thus have to take into account a myriad of signals such as mixed ones, unclear ones, deceptive ones, and tentative ones (the "trial balloon") and incorporate how each is received and under what conditions. Thus, a research strategy that promises parsimony may actually expand to hermeneutic excess. In fairness, the author seems aware of the complexity of signaling as a political act. He asks at the close of the book: "Is signaling as unidirectional as I present it? Do presidents simply talk about policy and influence it?" (p. 169). Nevertheless, *The President's Speeches* is an innovative and responsible attempt to recast the "going public" option in presidential politics.

PHILIP ABBOTT
Wayne State University

Strom: The Complicated Personal and Political Life of Strom Thurmond
by Jack Bass and Marilyn W. Thompson. New York, Public Affairs, 2005. 415 pp. $27.50.

This book is a superb biography of the late Senator Strom Thurmond. It provides systematic and comprehensive coverage of both his personal and political life that does not omit and/or marginalize the unpleasant and risqué aspects of his life. This work is especially to be praised for its balanced treatment of Senator Thurmond's secret relationship with his African American daughter. Yet, this political man is the center. Jack Bass and Marilyn Thompson write: "Thurmond's career was more complicated than almost [that of] any other modern-day politician. It ran the gamut from Roosevelt New Dealer and progressive Southern governor to Dixiecrat segregationist, from first successful Senate write-in candidate to champion of the filibuster. He survived a party switch, abandoning the Democratic Party once and for all in 1964 to emerge a few years later as kingmaker for Richard Nixon" (p. xv). Their evaluation of him is that "he mastered the art of expediency, shifting with the changing winds and never stopping to apologize to those hurt by his actions" (p. xiv). And in these switches,

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he somehow convinced "himself and his electorate that he had never based his positions on racial animosity, only on the principles of states rights" (p. xv).

The book starts with Thurmond's acquisition of his political motivations, the roots of which lay in Edgefield County, South Carolina, the home of the most "rousing race-baiters" in the region, state, and nation. Among these were the notorious Ben "Pitchfork" Tillman, Confederate war hero M.C. Butler, and Cole Blease. The United Daughters of the Confederacy have a shrine, monuments, and a museum there to Confederates, including Thurmond's grandfather, and to the "Redshirts," an organization responsible for the bloody "Hamburg Massacre." Linking Thurmond to this racist past was his father, a judge and state legislator, as well as attorney and advisor for Tillman. Thurmond's father took him to meet Tillman, to observe Blease's gubernational campaign (from which Thurmond received the inspiration to become a politician), and to the state capitol to meet and see defiant states-righters past and present.

At Clemson University, which is located on the former estate of John C. Calhoun, theorist of nullification, interposition, and secession, Thurmond received more indoctrination. Soon, he moved as quickly as possible into the political arena. In 1928, he won the post of county school superintendent. In 1932, he won the first of two terms to the state Senate; in 1938, the state legislature elected him circuit judge. Although he went away to World War II and landed at Normandy, his heroics there kept his name in the newspapers, and before he returned home, the state legislature "reelected him in absentia" (p. 74). In 1946, he won his first two terms as governor, and in 1948, he ran on the Dixiecrat ticket for president. In 1950, he ran for the Senate and lost, but in 1954, he entered as a write-in candidate and won.

Bass and Thompson find that despite his longevity in the Senate, his legislative achievements are "thin" (p. 331). But in the American political process and party system, his influence and legacy are nearly immeasurable. Not only did he switch parties, he circumscribed and undercut the 1968 third-party presidential bid of George Wallace while saving Nixon's nomination at the convention. Together, Thurmond ("Mr. Inside") and Wallace ("Mr. Outside") induced the white Democratic electorate to switch to the Republican Party. I highly recommend this book to party, leadership, and African American studies scholars.

HANES WALTON, JR.
University of Michigan

Politics and Film: The Political Culture of Film in the United States *by Daniel P. Franklin. Lanham, MD, Rowman & Littlefield Publishers, Inc., 2006. 223 pp. Cloth, $70.00; paper, $26.95.*

I confess that I was reluctant to take this book to the beach with me as light summer reading because it had all of the trappings of a serious work, including

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an annotated list of films and an index. But I did, and my instincts turned out to be right. This elegantly written brief volume is fun to read, full of stimulating questions and provocative answers. But it is also a serious scholarly analysis that uses cultural theories to explain why Hollywood produces the kinds of full-feature films it does. In fact, the book is primarily a treatise about the many subtle and not-so-subtle ways in which culture shapes everything, including entertainment media, politics, and economics. As American culture has changed, so has the content and ideological thrust of American films.

Daniel Franklin, who teaches political science at Georgia State University, discusses films on three levels: individual, societal, and systemic. At the individual level, he takes the controversial position that solid evidence is thin for linking exposure to specific films to subsequent political actions and antisocial behaviors. Actual behaviors can be verified, but the causal links to films are spurious. Franklin believes that films, rather than generating new beliefs or changing established ones, tend to reinforce viewers' existing views. If one absolves films as a cause of violence and other dysfunctional beliefs and behaviors, it becomes important to scrutinize the many regulatory laws through which societies try to control the presumed deleterious consequences of feature films on citizens' behavior. Franklin does that by analyzing the legal issues involved in the control of film content and censorship within the context of the First Amendment.

At the systemic level, Franklin discusses what kinds of beliefs and values American films reflect and promote. Using a poignant example, he wonders why it is more acceptable to American audiences to watch men kill each other on screen than to see them make love to each other? Why is the sight of murder more tolerable than that of unconventional, presumably sinful, sexual acts? Why are Americans still in love with Westerns, with rags-to-riches stories, and with tales of rugged individualism? Franklin raises the typical chicken-and-egg question: do films guide American culture or do they merely reflect it? He gives the typical answer—they do both. They reflect current political thinking—who the good and bad guys are—while their treatment of the situation can influence whom and what society praises and whom and what it condemns.

Other chapters analyze the demographics and psychographics of film audiences and the fit between audience tastes and producers' predilections, and the films that are created to satisfy both. The book also includes chapters on the political economy that trace how the film industry moved from monopoly status in its early years to far more competitive conditions currently. Franklin concludes that filmmakers are primarily capitalists interested in the bottom line. As such, they must and do cater to their audiences, which are primarily young and far more liberal than average Americans. Film fare reflects that. Finally, as an extra treat for people who see films only rarely or who have an insatiable appetite for them, each chapter ends with a mini-review of a feature film that echoes the themes of that chapter. As I said at the start of this

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review: this is a fun book to read, hard to put down, and spiked with intriguing information that will be unfamiliar to most readers. Students of all ages will love it.

DORIS A. GRABER
University of Illinois at Chicago

Who Leads Whom? Presidents, Policy and the Public *by Brandice Canes-Wrone. Chicago, IL, University of Chicago Press, 2006. 192 pp. Cloth, $47.50; paper, $18.00.*

How officials should follow or lead the public constitutes an ancient question of democratic theory, and whether they do or do not, an empirical question of more recent vintage. By exploring presidents' involvement of the citizenry through public appeals and polling about policy issues, *Who Leads Whom* begins to untangle connections between leaders and led.

Brandice Canes-Wrone argues that "presidents' involvement of the public," through "plebescitary activities" (p. xii) of mass appeals and polling, moves policy toward majority opinion. The presidents' involvement of mass opinion "substantially increase[s] the influence of the people," but rarely entails "presidents persistently ignoring societal welfare" (p. xiii). Presidents appear to follow public opinion partly because they appeal on already popular proposals (pp. 29, 41).

In exploring how plebiscitary activity affects presidents' and legislators' policy decisions, the analysis focuses on two central aspects: presidential public appeals and incentives to "pander" to current opinion. Typically, presidents appeal on already popular initiatives, with larger influences on domestic than foreign policies. Presidents' involvement of the public typically shifts policy toward and increases influence of majority opinion, and presidents typically endorse only popular policies that they feel "will improve societal welfare" (p. 5).

When a president is clearly popular or unpopular, he does not support detrimental popular policies. If no election approaches, he will not cater to approval unless he agrees with a policy. "Only when a president is marginally popular and soon faces an electoral contest does he pander ... by supporting a popular policy that he believes will not advance citizens' interests" (p. 6).

Two motivations for this study are classic insights from E.E. Schattschneider (*The Semisovereign People*, New York: Holt, 1960) and V.O. Key (*Public Opinion and American Democracy*, New York: Knopf, 1961) about the public's roles in policy making. For Schattschneider, when the scope of conflict is large, the public influences policy making (p. 10); otherwise, special interests dominate. For Key, elites respond to current and "latent opinion" that creates "opinion dikes" (p. 10) limiting policymakers' choices. John Zaller's query (*The Nature and Origins of Mass Opinion*, New York: Cambridge, 1992) about how much,

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which, and when elites lead rather than follow public opinion is partially answered here. The pandering theories of Lawrence Jacobs and Robert Shapiro (*Politicians Don't Pander*, Chicago, IL: University of Chicago Press, 2000) that presidents use polls and public relations tools to craft rather than cater to public opinion face scrutiny here.

Using formal, spatial, quantitative, and narrative analyses that bridge political institutions and behavioral approaches, *Who Leads Whom* develops "Public Appeals Theory" (p. 16) by focusing on the relationship among the players of presidents, congressional representatives, and voters. Public appeals can augment presidents' legislative influence by increasing issue salience. Presidents since Dwight Eisenhower have been more likely to appeal on popular domestic issues, but they can also affect public opinion initially against them in foreign policy. Bill Clinton's appeal about sending troops to Bosnia turned initially unpopular opinion around in polls and congressional action after his November 1995 speech.

Central here is "Conditional Pandering Theory" (p. 105), when demagoguery is likely in "policy pandering" because presidents follow current opinion even when not anticipating beneficial policy results. "Highly popular and unpopular presidents do not engage in policy pandering" (p. 120). Only marginally popular ones do, and not if the public will learn the consequences before an election. Generally, presidents "endorse the option most likely to produce good outcomes" (p. 120). However, Jimmy Carter's scaling back of his signature humanitarian assistance (p. 133) and Ronald Reagan's acceptance of standby tax proposals (p. 150) represent pandering.

The "first glance" at 1957–2000 domestic issue appeals finds that already popular presidents appeal publicly when the average policy support is already a majority (55 percent), thus contributing to legislative successes of popular proposals (59 percent). While presidents likely publicize foreign policy initiatives already favored by the majority, foreign policy appeals increase popular support but not necessarily to majorities (44 percent), even on legislative successes (48 percent). Multivariate analyses show effective selective public appeals in both domestic (Table 3.5) and foreign policy domains (Table 4.4).

In short, Canes-Wrone fruitfully links rational choices to reasonable leaders and people facing regular elections. Yet, the concluding chapter, rather than discussing implausible institutional alternatives like interterm presidencies to reduce infrequent pandering, should have addressed the extent to which more close elections facing marginally popular presidents might increase demagoguery. Although the Conditional Pandering Theory implies conditional probabilities, only a brief footnote (p. 117) mentions more fruitfully employed Bayesian analysis. Still, a provocative integration of philosophical, electoral, and empirical questions, *Who Leads Whom* well alerts advanced students to emerging answers to ancient inquiries.

RICHARD SOBEL
Harvard University

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Going Dirty: The Art of Negative Campaigning *by David Mark. Lanham, MD, Rowman & Littlefield Publishers, Inc., 2006. 280 pp. $24.95.*

As we head into the midterm and presidential election seasons of 2006 and 2008, we will undoubtedly see many negative campaigns—especially in districts located in the pivotal battleground states. In *Going Dirty: The Art of Negative Campaigning*, David Mark examines negative advertising in campaigns and provides a historical context for what we may see over the next two election years.

Historically, Mark argues, campaigning has been a process of comparing and contrasting candidates. The modern system of *negative* campaigning, Mark explains, has its roots in the late nineteenth century, when "candidates became their own advocates [and] rules of decorum demanded at least a slightly higher level of rhetoric ... the theory that undergirds the twenty-first-century requirement that federal candidates stand by and endorse their own ads" (p. 24). This is not to say that campaigns did not contain negative components; Mark shows that negative comparisons were often articulated by proxies for the candidates, such as partisan newspapers. In the twentieth century, however, negative campaign messages were handled by the candidates themselves. Mark claims that the first "modern negative campaign" occurred in the 1934 California gubernatorial election, when Frank Merriam's campaign not only branded novelist Upton Sinclair a Communist but also was the first campaign to employ direct mail. Negative campaigning via television was first employed by Lyndon Baines Johnson in his 1964 presidential run against Barry Goldwater, when his famous "Daisy Girl" ad made "Goldwater himself ... the focus of the election" (p. 40). Without naming his opponent, Johnson's campaign implied that Goldwater's apparent militancy would result in a nuclear apocalypse. Mark also explains how Jesse Helms's campaigns in North Carolina exemplify the modern form of campaigning: "long, television-driven, negative, and with relatively few personal appearances" (pp. 104–105). Mark also discusses how new developments in negative advertising, such as the "Swift Boat Veterans for Truth," allow a campaign to hurl invective while shielding the candidate from any negative association with such strategies. Finally, Mark examines how blogs and e-mail make it possible for negative messages to spread much farther than more traditional methods would allow.

Negative campaigning works, which is why candidates regularly employ it. As Mark explains, it is particularly effective when ads focus the electorate on a specific issue. Johnson's Daisy Girl ad brought about a "long series of Cold War–era campaign commercials to focus on a candidate's potential for launching a nuclear conflict" (p. 49). After the Cold War removed the Soviet threat, Mark explains, the 2002 Georgia Senate race put terrorism at the center of all modern campaigns. Mark also explains that negative campaigns are effective because they raise money; capitalizing on the flaws of

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an opponent generates more donations than touting a candidate's virtues. Finally, he explains that negative ads are effective in "hammering opponents before most of the electorate even seem[ ] to be seriously paying attention to politics" (p. 113). In the 1996 presidential race, Bill Clinton and Al Gore connected potential Republican candidates to Newt Gingrich. When Senator Robert Dole was selected as the nominee, they yoked Gingrich to Dole—even though the two were not necessarily politically tied. In this way, negative advertising begins long before the campaign begins, forcing the opponent to go on the defensive before he or she can even begin to plan a positive message.

While scholars and pundits alike bemoan negative campaigning, Mark points out that American voters notice when negative comparison ads lapse into invective, and in those cases, he argues, those ads fail.

LEAH A. MURRAY
Weber State University

Disability Rights and the American Social Safety Net *by Jennifer L. Erkulwater. Ithaca, NY, Cornell University Press, 2006. 252 pp. $42.50.*

How far do social constructionist-oriented policies that focus on individual rights and inclusiveness advance the social good of the disabled in the United States? Jennifer L. Erkulwater argues not nearly far enough in her important and very engaging new book on federal social welfare and disability policy. Since the 1960s, American disability policy has been characterized by a shift in orientation from a medical model focused on the welfare state providing adequate social services including education, job training, and income support to a more libertarian-oriented social model based on socially constructed individual rights for the disabled. This social model has included independence from public institutions, anti-discrimination regulations and laws such as the Americans with Disabilities Act, and inclusiveness in American society. The change in federal disability orientation was sped up by de-institutionalization caused by the Supplemental Security Income program and a shift of the disabled from public institutions to federally funded community care. Community care has been decentralized and fragmented among numerous federal, state, and local programs, and this has resulted in an unequal distribution of resources for the disabled. In line with this shift in disability policy orientation, disability advocates throughout the 1980s and 1990s also tended to "define civil rights laws and social welfare programs as incompatible approaches to the problems of disability … " (p. 232).

Although this strategy of advocating individual rights in tandem with reducing the cost and size of the social welfare state appealed to neo-liberal market-oriented politicians in Congress during this period, Erkulwater argues that this advocacy approach has stalled positive social change in terms of

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significantly bettering the social good of the disabled through the social safety net. Even civil rights laws for the disabled have had limitations in terms of vigorous enforcement by the courts and administrative agencies. By 1998, in a backlash to the social constructionist and libertarian approach to federal disability policy, and because of humanitarian concerns, Congress had repealed many of the budget cutbacks to federal disability programs.

This book is an important examination of how social constructionist-oriented and decentralized politics, in tandem with civil rights and identity politics on behalf of and by the disabled, meshed with adequately meeting human needs. What resulted from this policy approach was the partial upholding of civil rights and more inclusiveness, with a fraying of the social safety net. What is and was required, as Erkulwater astutely notes, are both approaches, complementing each other and incorporating vigorous civil rights enforcement and inclusiveness for the disabled with uniform and national social service benefits provided through generous social welfare programs. This book provides a clear and important analysis of what is wrong with current federal disability policies and advocacy and how they may be altered to achieve more positive policy outcomes. It is required reading for scholars, students, and practitioners of public and disability policy and politics.

MICHAEL GIVEL
University of Oklahoma

The Strange Death of Liberal America *by Ralph Brauer. Westport, CT, Praeger Publishers, 2006. 288 pp. $49.95.*

Liberalism, according to Ralph Brauer, is not quite dead but is in intensive care. In liberal America, "government exists to keep the playing field level" (p. xii); this tradition is embodied in figures such as Paul Wellstone. Brauer, executive director of the Transforming Schools consortium, does not engage historians and political scientists who examine the liberal tradition and deliberate whether America should be called liberal; nor does he engage policy research that might cast doubt on the claim that liberal America has historically demonstrated its commitment to a level playing field (with acknowledged racist vestiges). In the new era of bad feelings, Brauer is ultimately as optimistic as the optimism of his liberal America itself. He is convinced that angry citizens will rise up when the issues are clear enough, and say no to the counterrevolution that seeks to destroy liberal America.

This book will appeal chiefly to liberal and progressive readers outside academia. It joins various recent works by journalists and activists attempting to make sense of or rail against the conservative movements of the Reagan–Bush years. These include lively and often humorous works by Jim Hightower, Michael Moore, and Al Franken and works such as Thomas Frank's *What's the Matter with Kansas: How Conservatives Won the Heart of America* (New York:

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Metropolitan Books, 2004) and John Micklethwait and Adrian Wooldridge's *The Right Nation: Conservative Power in America* (New York: Penguin, 2004). *The Strange Death of Liberal America* is written as a serious reflection. It is not as analytical or as engaged with contemporary scholarship as is *Right Nation*. At its best, the book is insightful and passionate. Some important primary materials get close attention, such as the voting rights–era Mississippi Sovereignty Commission files and the more recent Internal Revenue Service documents concerning the Bush–Cheney Recount Fund and its link to the Brooks Brothers riot. Most citations are to journalistic sources. There is a useful internet bibliography.

This wide-ranging reflection moves from road rage, reality shows, manipulation of digital images, and the cost of professional sports tickets to No Child Left Behind, environmental degradation, media conglomeration, voting machine chicanery, and growing economic inequality in America. For Brauer, who is enamored of "system dynamics," everything is organically, holistically intertwined (p. 105). The book makes use of several devices to focus its broad scope. One is the identification of four "cornerstones" of liberal America that loosely organize the volume: economic justice, educational equity, media fairness, and the right of all citizens to be heard fairly in the political process. Another device is the use of a "local setting" linked to each chapter's theme. A chapter beginning with television ads featuring new vehicles perched atop Monument Valley buttes segues into advertising, media manipulation, the war on public broadcasting, manipulation of nature, environmental degradation, and the Iraq War. Analogies and metaphors are also continually used to link observations. Many of these are sloppy; they become irritating and come close to smothering the good insights in this book. Incidents and stories are made to bear tremendous weight. Brauer follows a strong chapter on Fanny Lou Hamer and the struggle for voting rights with a media fairness chapter on Martha Stewart. Now turned cultural critic, Brauer has Stewart stand in for the "two faces" of American politics, one fascistic and the other allowing individuals to flourish (p. 138).

Brauer is at his best and most passionate when focusing on education and voting rights. The conclusion, treating Hurricane Katrina as a symbol of what is wrong with the counterrevolution, is also good. While claiming that many analysts oversimplify American politics, the author often does the same. The modern Republican Party consists of a rather well-heeled conglomeration of religious fundamentalists, business fundamentalists, and unreconstituted Southern racists. There is little sense of tension among its factions. When the author lambastes Democrats for sitting ineffectually by as the counterrevolution hijacked liberalism, it is hard to disagree. However, Brauer doesn't offer anything new on the score of why the right wing has been so successful or on what is wrong with the Democrats. Brauer is convinced that a recipe for Democratic success is for candidates to take Spanish lessons and work with the economic disparity and educational equity cards that favor them. The public's

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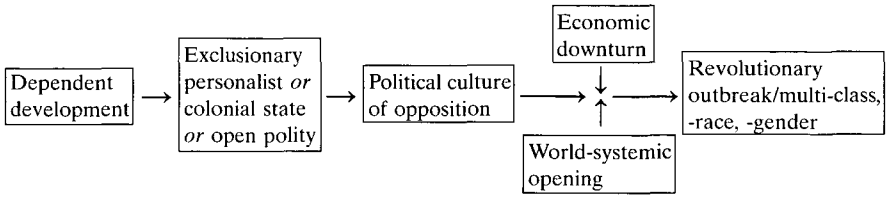
commitment to the cornerstones of liberal America remains firm. So despite the title, the patient will recover—somehow.

CAROL NACKENOFF
Swarthmore College

Taking Power: On the Origins of Third World Revolutions *by John Foran. New York, Cambridge University Press, 2005. 410 pp. $29.99.*

It is difficult to find a redeeming feature in this sprawling and superficial discussion of forty-six cases of "third-world revolutions" in some twenty-seven countries (seven cases of "type three: short-lived social revolutions: coming to power" are identically reentered under "type four: reversed social revolutions: falling from power," with different single-year dates against each country; Iran has four revolutions between 1951 and 1979, and Guatemala and Nicaragua have three each!!) (pp. 248–249). John Foran is as eclectic in compiling analytical perspectives as he is in the selection of his cases. He is, as the saying goes, all over the place. This can easily be seen in his "multi-faceted theoretical model of the origins of third-world social revolutions" (p. 2). As depicted in Figure I.1 (p. 18), the model comprises the following:



Foran would have us trust his narrative-based judicious determination in filling these boxes with zeros or positive and negative ones in his summary tables, using Boolean algebra following Charles Ragin's method for tracing multiple and conjunctural causality.

The model is built on a tautology, inasmuch as "dependent development" is part of the definition of the third world! Tautological convolution persists into the next box, with "colonial state" as one of the three possible favorable conditions. But look at the other two alternative conditions for third-world social revolutions in its absence: "exclusionary, personalist" *or* "open polity"! Am I fussing too much by suggesting that the excluded middle between exclusionary and open polities makes it logically impossible for this condition NOT to be satisfied? The patient reader can go through the rest of the boxes on her own.

Foran hails Theda Skocpol's *States and Social Revolutions* (Cambridge: Cambridge University Press, 1979) as "a landmark in the sociology of revolution" (p. 11), and claims to "adopt in full as my own" her definition of social revolution. We are given Skocpol's definition: "Social revolutions are rapid,

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basic transformations of a society's state and class structures ... in part carried through class-based revolts from below," whose unique feature is the key role played by "class struggles" (Skocpol, pp. 4–5 cited on p. 7). Foran is, of course, entitled to modify his heroine's definition by leaving out the causal significance of state breakdown under international pressure to highlight class struggle, but should be more explicit about it. The much greater problem, however, is that he has in no way adopted her definition in full as his own! It is hard to see how this definition fits the anti-colonial revolutions as "the closest in kind ... in the patterning of causality" (p. 7), let alone the four other types, not to mention "type seven: no attempt at revolution!" In fact, I fail to see how any definition or conception of revolution could possibly fit Foran's seven undefined types and forty-six arbitrarily selected cases of so-called third-world revolutions.

Having thus surveyed the past, the book concludes with reflections on the future of revolution and the speculation that "out of the ashes of past failures may yet grow the seeds of future breakthroughs to a new world" (p. 276). In the introduction, Foran tells us that he has been elaborating his multi-faceted model "for the past fifteen (!) years" (*sic*, p. 2). I am sorry he has not found something better to do with his time.

SAÏD AMIR ARJOMAND
State University of New York at Stony Brook

The Politics of the Global Oil Industry *by Toyin Falola and Ann Genova. Westport, CT, Praeger Publishers, 2005. 280 pp. $44.95.*

Toyin Falola and Ann Genova have produced an interesting introduction to a very large topic. They are at their best when they focus on development and country-study issues, but the book could have been improved by a more sophisticated discussion of the economics of oil and the evolving geopolitics of energy.

On the history of the oil industry, oil policy strategies, and performance by the key oil exporters, the authors provide not just a readable overview but also a useful annotated bibliography to a very large literature. The chapter on the relation between oil wealth and economic development is particularly helpful. Oil resources, they say, have been a mixed blessing. The book traces the history of host-country governments understandably trying to capture more of the rewards from the foreign oil companies once those companies have invested enough capital and expertise to make them lucrative targets. The trouble, as Falola and Genova point out, is that this rent-seeking behavior is neither a good basis for further development of the domestic industry nor good training for governments in how to promote self-sustaining economic development. The sad history of Nigerian economic development is a case in point that Falola has explored deeply in his other works.

Despite much discussion of monopolies, cartels, and "control" of the global oil industry, it would have been helpful if the authors had more clearly

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specified an economic model of energy and oil demand and supply. A plausible model would focus on income, relative prices, and technology. It would also be sensitive to timing issues—how long does it take consumers and producers to adjust to changes in relative prices? Such a model would have given the reader a better basis for understanding the recent swings in global energy prices and the economic—and political—leverage of the Organization of the Petroleum Exporting Countries and other market players.

Inaccurate and misleading data are also sometimes a problem. For example, the authors claim (pp. 19, 78) that the United States imports the bulk of its crude oil from Saudi Arabia. Readers might infer that the magnitude of U.S. imports from Saudi Arabia makes that country terribly important to us. In fact, for the last decade, the United States has imported less than 15 percent of its oil from Saudi Arabia (and no more than 21 percent from the Persian Gulf as a whole). Saudi Arabia is important, but it doesn't matter very much whether it is the source of the bulk of U.S. imports or only 15 percent of them. What matters from an economic viewpoint is that oil is fungible—once produced, it can be sold anywhere—and that Saudi Arabia is the swing producer. Its exports constitute a large share of global trade, and it has (usually) huge excess capacity. It often has had—and sometimes has used—the power as swing producer to dramatically affect the world price of oil, and even the health of the world economy, by its production decisions. What matters from a geopolitical standpoint is that Saudi Arabia is a politically fragile state unable to defend itself militarily.

Since the book went to press, a dramatic rise in world oil prices has shifted the geopolitical landscape described by Falola and Genova. Huge increases in oil revenue have enabled Hugo Chavez's Venezuela to flex its political muscles to undermine U.S. influence in Latin America and have allowed Vladimir Putin to assert Russian power over its neighbors in eastern Europe and central Asia. China's huge surge in economic growth and energy demand has affected its foreign policy efforts in Africa and central Asia. Energy demand and supply issues are now playing a large role in great-power politics as the UN Security Council wrestles with the Iranian nuclear issue. *The Politics of the Global Oil Industry* gives the reader a place to start in trying to understand these issues, but the issues demand a much deeper treatment for policy analysis.

EVAN HILLEBRAND
University of Kentucky

From Ethnic Conflict to Stillborn Reform: The Former Soviet Union and Yugoslavia *by Shale Horowitz. College Station, Texas A&M University Press, 2005. 296 pp. $45.00.*

Ethnic conflict hampers efforts by transitioning states to build democracy and implement market reform. This uncontroversial but nevertheless important

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observation underpins Shale Horowitz's study of how ethnic conflicts affected transitions in post-Communist states. Although he avoids generalizability, Horowitz's work offers insights regarding the fragility of transitioning states and the difficulties of building democracy where ethnic differences have engendered bloodshed.

Horowitz advances three key contentions. First, he argues that post-Communist leaders have been more likely to engage in reform policies (both democratic and market based) when their countries enjoyed greater levels of economic development prior to the Communist collapse. Second, such reforms have been more likely when the country had experienced "frustrated national ideals," measured by the levels of pre-Communist economic development and political achievement. Leaders of developed states were likely to press for reform in order to proceed with further economic development, and used democratization programs to unseat obstreperous Communist elites. Those states with enhanced pre-Communist political and economic conditions were also more likely to follow such programs to regain earlier prominence.

The third hypothesis posits that long periods of war retard the implementation of successful liberalization reforms. This fact, Horowitz contends, explains the post-conflict difficulties that regimes have had with fulfilling transitional goals. Ethnic conflicts distract political elites from reform projects. Populations unified around a nationalist conflict tolerate this neglect and are thus more likely to accept economic hardship and limited freedoms. However, the military defeats generally experienced by post-Communist regimes severely delegitimize the reform regimes, leading to either military coups or electoral replacement. Moreover, economic development suffers from the isolation that often accompanies wars.

Horowitz tests his framework through quantitative and qualitative methods. His statistical study of all post-Communist states confirms as significant the length of time at war and the impact of previous national achievements on levels of political and economic liberalization. He bolsters these findings with eight case studies of post-Communist states that experienced ethnic conflict. These include Croatia, Serbia, Bosnia, Azerbaijan, Armenia, Georgia, Moldova, and Tajikistan. A significant omission in this section is Russia, whose conflicts with Chechnya would have provided a salient test for the reach of Horowitz's theory.

Although the larger argument is compelling, the case studies unfortunately vary in their depth. The methodology lacks transparency, so the reader is left to guess how the author assesses key variables, such as development, democratization, and political delegitimization resultant after military defeat. Horowitz includes neither a methodological appendix nor data tables of his relevant variables, so key factors are described rather than measured, often using other case study countries as benchmarks rather than stating objective measures. Given that his evidentiary standards are unclear, one may suspect theoretical stretching on the part of the author to interpret cases in ways that benefit his

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model. This tendency is problematic in two ways. At times the author makes statements that do not coincide with the conventional wisdom, for example, that Georgia's Eduard Shevardnadze was willing to give autonomy to South Ossetia (p. 217). On occasion, he also seems to contradict his own remarks, for example, observing serious democratization problems under Croatia's Franjo Tudjman (p. 146) and then later referring to the "important advances" of Croatia's "democratization and market reform" prior to the outbreak of hostilities (p. 161). A clearer explication of the case methodology, as well as acknowledgment of unusual inferences, would have mitigated controversy or confusion.

Despite these methodological flaws, Horowitz's book is an important and unique effort to combine a broad comparative approach with in-depth case study analysis to shed light on what is a critical question in comparative and international politics.

JULIE GEORGE
Queens College, The City University of New York

Essence of Political Manipulation: Emotion, Institutions, and Greek Foreign Policy *by Nikolaos Zahariadis. New York, Peter Lang Publishing, 2005. 231 pp. $66.95.*

The name dispute between Greece and the former Yugoslav Republic of Macedonia has generated as much emotion and controversy as nearly any inter-state dispute, but has produced no casualties. Because of its controversial nature, the dispute has been the subject of many publications that, albeit as passionate and controversial as the issue itself, have contributed toward its understanding but have not clarified it.

Versed in the theoretical literature and armed with a complete command of the dispute's specifics, Nikolaos Zahariadis develops a comprehensive scenario by relying on a two-way methodological approach: he deploys theory to process the dispute's empirical evidence, and then relies on the empirical evidence to verify the validity of three different and even competing theoretical models. His objective is to determine whether the dispute substantiates the explanatory supremacy of the multiple model against that of rational internationalism and the two-level game approach. For those not versed in the theoretical models, the author carefully summarizes each model separately and proceeds to test each of them against his in-depth and detailed understanding of the dispute, which, due to its negligible negative long-term ramifications for the participant politicians, seems to have withheld few if any secrets from the author's diligent research.

Nikolaos Zahariadis argues that a careful evaluation of Greek foreign policy from 1990 to 2004 proves that although all three models above are pertinent to understanding foreign policy, the multiple-streams model "provided a systematically more complete explanation of the fluctuations in Greek policy,"

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and that it "consistently exhibited moderate to strong explanatory power" (p. 176). Because multiple streams rely on domestic politics to explain foreign policy, the specific case study is an ideal testing ground, due to the emotionally charged atmosphere that characterized domestic politics in Greece during the dispute. Since emotion influences behavior, political agendas can rely on manipulating emotions to affect foreign policy outcomes. On the basis of this assumption, the author proves that there was a correlation between emotion/manipulation and cooperation/confrontation in Greek foreign policy during the dispute. Changes in the emotion/manipulation relation produced changes in the cooperation/confrontation spectrum of behavior. Such changes, he argues, could not be explained better by rationalism internationalism or the two-level game models, mainly because the first one relies on external stimuli to explain behavior, whereas the second relies on the interacting dynamics of both domestic factors and external stimuli.

Clearly, the author makes a strong case for his thesis, and his analysis provides a vivid and reliable laboratory in which readers can delve into the nuances of theoretical models and the way they relate to the practice of foreign policy. In this regard, his book makes a solid contribution in connecting theory to practice. For readers who are familiar with the details of the dispute but lack theoretical exposure, the book can be a useful transitional device. For readers with theoretical grounding, the book is useful in exploring how different models test themselves against a case study that involves high levels of emotion not directly generated by external stimuli, such as imminent threats to national security or the loss of life, that could skew the analysis in favor of external stimuli and rational internationalism. For these two categories of readers, the book will prove to be most rewarding. For readers versed in both the theory and the specific details of this case study, however, the book is bound to demonstrate the complementary validity but limited explanatory potential of each model. The simple reason that the multiple-streams model appears to provide a better explanation in this case might very well be the fact that Andreas Papandreou was quite capable of harnessing domestic sentiment about a security issue that did not involve any possible threat of war.

SYMEON A. GIANNAKOS
Salve Regina University

African Politics in Comparative Perspective *by Goran Hyden. New York, Cambridge University Press, 2005. 314 pp. Cloth, $70.00; paper, $24.99.*

One of the deans of Africanist political science in the United States, Goran Hyden has written a sweeping review of the major issues in African politics and the academic and policy literatures on the region. Throughout, Hyden is not afraid to take provocative positions, which he supports with an impressive

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command of English-language Africanist literature. Successive chapters discuss the weakness of state institutions in the region, the perpetuation of pre-capitalist logics in the countryside and the persistent agricultural crisis, clientelism and personal rule at the pinnacle of state politics, the weakness of policy and managerial processes within state institutions, gender and ethnic politics, and the relationship between Africa and the international community. Two final chapters assess the state of academic knowledge about the region, and Africa's economic and political prospects for the coming years.

Each chapter can be read separately, but they are tied together by common themes and concerns. Thus, Hyden argues throughout that political authority is problematic in Africa because of the blurry dividing line between the public and the private realm. Formal rules matter less than a series of informal institutions that regulate politics. Clientelism is one such institution, as is the tendency toward private appropriation of public resources, notably to benefit one's family and lineage group. One result, also much emphasized, is the weakness of African states, in terms of both capabilities and legitimacy. Several particularly strong chapters are grounded in Hyden's long experience of studying the public sector in East Africa and in his conviction that a prerequisite to an African renaissance is a more professional and authoritative public sector.

On a more theoretical level, Hyden returns time and again to the thesis that African politics exhibits distinctive features, which invalidate or at least weaken standard comparative political theorizing that does not adequately take into account African realities. It is clearly true that theory formation in comparative politics has been a highly Euro-centric and Americanist enterprise. But I am not sure that assertions about socio-cultural uniqueness are the best strategy for bringing Africa back into the mainstream of scholarly concerns. Indeed, as the book itself argues, the dynamics of African politics are often caused by structural characteristics such as low levels of urbanization that are present elsewhere (and are thus comparable) both historically, in the West, and today, in parts of Asia and Latin America.

Each chapter offers a boldly drawn summary statement about a huge and complex continent, and, perhaps inevitably, inadequate attention is paid to marshalling hard evidence for the assertions offered, to the variation across countries in the region, and to the exceptions to the generalizations offered. The chapter on agriculture, for instance, postulates an agrarian crisis on the continent but offers few hard data on agricultural production and exports, ignores the enormous variation across agro-ecological zones and countries, and fails to mention some bright spots, such as hybrid maize, which have known remarkable success, notably in southern Africa. The chapter on ethnicity and conflict is so preoccupied with the interesting if iconoclastic argument that ethnic conflict is declining that Hyden omits a serious discussion of the dozen or so civil wars that have afflicted the continent in recent years and that usually have been attributed to ethnic causes by the literature.

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These criticisms aside, this is a lively and informative review of a substantial amount of scholarship on African politics, which deserves to be read by all serious students of the continent.

NICOLAS VAN DE WALLE
Cornell University

The Lone Wolf and the Bear: Three Centuries of Chechen Defiance of Russian Rule *by Moshe Gammer. Pittsburgh, PA, University of Pittsburgh Press, 2005. 255 pp. $27.95.*

The Israeli scholar Moshe Gammer is justly renowned as the author of the meticulously researched monograph on the nineteenth-century Caucasus war (*Muslim Resistance to the Tsar: Shamil and the Conquest of Chechnya and Daghestan*, London: Frank Cass, 1994). In his newest book, Gammer brings the narrative all the way to our time, covering, as the subtitle promises, the last three centuries in the difficult and often tragic relationship between Russia and Chechnya. Correspondingly, the book falls into three parts. After a very brief outline of Chechen geography and anthropology, Gammer describes in great detail how, in the nineteenth century, colonial expansion into the North Caucasus unexpectedly became Russia's longest and costliest conquest ever; how, in the twentieth century, the Chechens never made peace with communist Russia and suffered wholesale deportation on Stalin's orders; and how this conflict continues now into the twenty-first century, with post-Communist Presidents Boris Yeltsin and Vladimir Putin willing to sacrifice Russia's fragile democracy for the sake of controlling tiny, stubborn Chechnya.

The undeniable strength of this monograph is its combination of relatively accessible style with a very impressive array of sources. Moshe Gammer is an old-fashioned polyglot orientalist, who can operate in Arabic, Russian, and Turkish as well as several Western languages. Gammer's erudition truly dazzles the reader. His greatest strength is an intimate knowledge of Islamic Sufi orders, with their teachings, prominent teachers, and organizations of disciples that—more than once—have been turned into a guerrilla force against Russia. This historical current of militant Islam, according to Gammer, is once again resurgent today after the destruction of modern Chechen nationalism during the 1990s.

Social scientists should not look here for a theoretical explanation. The book is based on an equally old-fashioned view of Russia as an inherently imperial power intent on expansion and harsh control of populations. When a population happens to be as freedom-loving and fierce as the Chechens, conflict becomes inevitable. This idea is captured in the book's title, which invokes the Russian "bear" and the Chechen "lone wolf." Gammer, however, tries to introduce nuance, arguing that the Russian state has never been an entirely homogenous entity and that wars depend on particular decisions

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made by particular personalities, such as President Yeltsin. In other words, alternatives were possible. But why, then, does history, as told in this book, appear doomed to an endless, tragic cycle? The book leaves us with the metaphor of the bear fighting the wolf. An irreconcilable pair indeed.

GEORGI M. DERLUGUIAN
Northwestern University

Why Not Parties in Russia? Democracy, Federalism, and the State *by Henry E. Hale. New York, Cambridge University Press, 2005. 275 pp. $75.00.*

For the most part, political scientists have been struck by the weakness of Russian political parties because a virtual canon of political science associates parties with democracy. Yet while Russian parties are weak, much research shows clearly that many of those parties have established a discernible "brand name" and reputation with the public. Henry Hale's book represents an attempt to resolve this seeming contradiction.

To answer this puzzle, the author has recourse to the concept of the political or electoral market for office seekers. In this market, candidates for office are consumers and parties are suppliers of the products these consumers need to be elected—reputation, organization, and financing (pp. 5–6). Parties also produce different forms of political capital—ideas about policy, well-defined organizations, and the ability to reward loyalists with tangible benefits (pp. 12–13). Yet at the same time, parties can be weakened where strong executives, as in Russia, can tilt the playing field to prevent the rise of any institutional challenge to their authority. Thus, given the strong resources available to the president, candidates or consumers had other and stronger sources of supplies available to them, so they did not need to depend on parties, and Boris Yeltsin and Vladimir Putin were able to further consolidate their strength at the expense of parties.

Comparing election results from the election of 1993, which the author believes represents a path-making election that then decisively shaped subsequent results, Hale finds that parties in fact connected with voters not on the basis of personalities, but rather on the basis of shared sentiments about topical political questions, and were linked to clear social structures and particular interests (pp. 114–116). Thus, partisan identification with parties grew through 2004 on this basis (p. 149).

At the same time, he makes clear that Presidents Yeltsin and Putin, as well as regional governors and financial-industrial groups, used every means at their disposal to subvert not just challengers from other parties but even those from within their own government who sought to develop parties strong enough to aggregate sufficient interests to challenge them. Thus, they created alternatives for candidates, so that they did not need to rely on parties, thus confirming the preexisting weakness of the parties.

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This is a very ingenious way of looking at the problem of parties in Russia, but it raises more problems than it solves. First of all, the idea that Russia is or was a democracy is highly problematic. Although there were undoubtedly more democratic elements within the system in 1991–1993 than has subsequently been the case, the last fifteen years (that is, not only Putin's term) have seen a steady diminution of democracy and civil rights in Russia. In this case then, the appearance of parties that are both weak and well known among the public is no longer so problematic, inasmuch as this is analogous to earlier periods in Russian history (1905–1917) and to other third-world states. Certainly we cannot ascribe the super presidentialism enshrined by Yeltsin in his 1993 constitution to democracy but rather, as his associates wrote back then, to his love of power. And the same point holds true for the repeated subversion by Putin and Yeltsin of their own governments' institutionalization. Likewise, the use of market analogies in a country where the state still owns the key means of production and capital is equally problematic. Indeed, the problem with this analysis is that it ultimately is detached from the Russian context that historically has privileged the Tsarist autocracy inherited by Yeltsin and Putin as being above all factional or sectoral interests, that is, exactly what parties are supposed to represent and aggregate. Thus, the whole thrust of Russian history is anti-party and gives executives strong incentives and capabilities to prevent the rise of parties or of other mediating political institutions. So although the author's answer to the problem of parties is ingenious, its ingenuity is purchased at the price of detaching Russia both from its history and from its deeper political reality.

STEPHEN BLANK
U.S. Army War College

International Organizations and Democracy: Accountability, Politics and Power *by Thomas D. Zweifel. Boulder, CO, Lynne Reinner Publishers, 2005. 224 pp. $19.95.*

Demands on international organizations (IOs) to prove their relevance in today's complex security environment have only added to earlier concerns that under increasing globalization, their power and lack of democracy pose a threat to individual and collective autonomy. For Thomas Zweifel, the answer to these ongoing legitimacy problems is transnational democracy: IOs ought to better represent the "interests of humanity as a whole" (p. 1). Premised on this notion, he offers one of the first empirical assessments of their legitimacy.

His assessment is harsh. Of eleven organizations examined, only the EU (+4) and International Criminal Court (+3) receive positive aggregate ratings along seven dimensions of transnational democracy, each scored as −1 (weak), 0 (medium), or 1 (strong). The old Organization of African Unity (−6) receives the poorest rating (the new African Union is an improvement at

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−2), closely followed by the United Nations (−5). The measures, which draw from principal-agent theories designed to address how government agencies (agents) can and should respond to the will of citizens and/or elected officials (the principals), are appointment (ability of principals to appoint or remove officials), participation (especially of weaker and non-state actors), transparency, reason-giving, overrule (whether principals and/or independent judges can overturn decisions), monitoring, and independence from capture.

The evaluations are learned and succinct, although subject to quibbles (for example, why emphasize dispute resolution over rule making and negotiation in the World Trade Organization [WTO]). Pithiness may also have bred errors, such as mislabeling the failed Multilateral Agreement on Investment and erroneously identifying the WTO as its negotiating setting rather than the Organization for Economic Cooperation and Development. The devil, however, is less in the details than in making judgments about how much and what form of democracy is appropriate. On this front, Zweifel unabashedly embraces a domestic analogy of IOs to bureaucratic agencies, courts, and even legislatures—a risky strategy that requires a stiff defense, given the field's traditional skepticism toward such an approach.

That defense is lacking on two fronts. First, Zweifel offers little to convince critics of either the realism or the desirability of transnational democracy. Such critics range from conservative "new sovereigntists," who worry about IOs' potential to usurp the U.S. Constitution, to liberal political theorists such as John Rawls, who has posited that legitimately governed international society should rest on a social contract among constitutional peoples, not cosmopolitan individuals. With barely a citation to the now extensive cosmopolitan democracy literature that counters these positions, Zweifel skirts the tough questions it addresses, such as whether transnational democracy must be premised on a transnational *demos*, what the boundaries of relevant political communities are, and what institutional form or level of decision making is appropriate.

Second, even granting the desirability of transnational democracy, a better case should be made for applying a standard set of benchmarks. Should the World Bank—a bureaucratic lending institution whose primary mission is to support development within states—have the same benchmarks as the UN—a multipurpose organization with a more overtly political and inter-state role? While both organizations could improve accountability and participation, the questions of to whom and by whom could be answered quite differently for each and still satisfy most understandings of legitimacy or democracy.

Zweifel is not unaware of these criticisms. An all-too-brief final chapter sketches the importance of transnational citizenship for transnational democracy and acknowledges that different weightings of the seven dimensions, according to their relevance for different types of organizations, might be appropriate. It is a pity that these acknowledgements do not inform the empirical analysis.

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Perhaps these criticisms will not trouble Zweifel, who clearly designed the book to provoke a wider policy debate. Whereas students will undoubtedly find it provocative, and will also appreciate the useful primers on the organizations it assesses, engaging skeptics outside the classroom will be a tougher challenge.

STEVEN BERNSTEIN
University of Toronto

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SEPTEMBER 11, TERRORIST ATTACKS, AND U.S. FOREIGN POLICY

Edited by Demetrios James Caraley

This collection of essays by a distinguished group of scholars analyzes the causes and consequences of the September 11 terrorist attacks. It is the first, and still the best, scholarly analysis of the forces that brought about September 11 and of what to do in the future.

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CONTENTS

PART I: INTRODUCTION

September 11: An Overview
Demetrios Caraley and Alexander Cooley
Barnard College and Columbia University

PART II: THE ATTACKS

- **The Post September 11 Debate Over Empire, Globalization, and Fragmentation**
  Walter LaFeber
  Cornell University
- **The Soft Underbelly of American Primacy: Tactical Advantages of Terror**
  Richard K. Betts
  Columbia University
- **The Pragmatic Fanaticism of al Qaeda: An Anatomy of Extremism in Middle Eastern Politics**
  Michael Doran
  Princeton University

PART III: THE AXIS OF EVIL

- **North Korea's Weapons of Mass Destruction: Badges, Shields, or Swords?**
  Victor D. Cha
  Georgetown University
- **U.S. Policy Toward Iraq Since Desert Storm**
  Daniel Byman
  Joint U.S. Intelligence Committee
- **CIA's Strategic Intelligence in Iraq**
  Richard L. Russell
  National Defense University
- **Contradictions in Iranian and Indonesian Politics**
  Daniel Brumberg
  Georgetown University

PART IV: LOOKING TO THE FUTURE

- **Al Qaeda, Military Commissions, and American Self-Defense**
  Ruth Wedgwood
  Yale University
- **An Interim Assessment of September 11: What Has Changed and What Has Not?**
  Robert Jervis
  Columbia University

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Correspondence

To the Editor:

In "Tragic Choices in the War on Terrorism," (Summer 2006 issue) Jerome Slater deploys utilitarian logic to arrive, with regret, at the conclusion that torture is acceptable in the current war against terror. Confronted with the choice between continuing a principled but ineffective ban on torture and a serious effort to regulate and control torture, he chooses the latter. I agree with Slater's assessment that, like it or not, we are enjoined in a debate on torture, but I cannot agree with his analysis and conclusions.

A number of Slater's assumptions must be challenged, including the fundamental equation of the current "war on terror" with the classical notion of a just war. In this short reply, I will briefly address two specific concerns.

First, any measured policy assessment requires some comparison of the benefits of a proposed policy against the costs and benefits of alternatives. Slater makes unwarranted assumptions about the practical benefits arising from the practice of torture. As Americans recognized with Abu Ghraib, torture is inherently punitive and humiliating, and the problematic nature of the information extracted by such means is well established. Even if torture may occasionally yield useful information, there is certainly no guarantee that results will be useful—especially under the time constraints of a "ticking bomb" scenario. If lives or victory hang in the balance and new information could alter the outcome, the *chance* that torture will yield *accurate* information in a *timely* way would still need to be weighed against the cost of alternative strategies—which might include, for example, the use of truth serum or non-coercive interrogation methods. When all the probabilities are taken into account, it is difficult to imagine real circumstances in which torture is the least bad alternative.

The second concern relates to the importance and relevance of international law for this particular issue. Slater sidesteps the question of international norms and fails to acknowledge the jus cogens nature of the prohibition that outlaws torture *even* as an instrument of war. The torture prohibition is not simply a national norm, nor is it an ordinary treaty obligation. As a peremptory norm under provisions of the 1969 Vienna Convention on the Law of Treaties, the prohibition against torture is recognized as a principle of international law from which no derogation is possible, and which renders null any treaty written

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in its contravention. In other words, the prohibition against torture is lodged in the bedrock of our modern international legal order.

One must ask, then, what are the costs to global society of eroding, or repudiating, the *international* normative prohibition against torture? Obviously, it matters which state threatens the repudiation. For the health and further development of an international legal order, repudiation of core norms by a regime that lies outside or at the bounds of the international legal order is not nearly as consequential as similar action by the world's leading power and presumptive guarantor of international order. In practical terms, U.S. repudiation of this peremptory norm would erode confidence in the norm, destroy any deterrent effect it might have, undermine its standing among those who would use the norm to secure political (and democratic) reforms, alienate allies who would uphold the norm, and conceivably open the door to reconsideration of other peremptory norms. Those are costs of consequence. At the very least, weakening the international norm would signal a new tolerance for the practice of torture worldwide and throw sand in the face of those who—like Moroccan democratic reformers in recent years—have relied on international norms to reform their own domestic penal code. Few would likely appreciate the nuances of a policy that, along lines suggested by Slater, condoned torture under American supervision but prevented rendition of detainees to homelands where they risked torture in unregulated fashion by their own compatriots.

The framers of the 1984 Convention Against Torture solved the conundrum of Slater's "tragic choice" by distinguishing *torture* from *cruel, inhuman and degrading treatment* (CID). The convention obligates state parties to avoid and prevent CID, but it forbids torture under any circumstance. Slater rightfully argues the difficulty of drawing an indisputable line. But the UN Committee on Torture and other human rights monitors have shown that however undesirable, it is possible to live with this ambiguity. On balance, the moral and political inconvenience of tolerating ambiguity pales by comparison to the damage that would be done to the international normative framework by an outright abrogation of the prohibition against torture.

SUSAN WALTZ
University of Michigan

The Author Replies:

The willingness to condone some forms of interrogational coercion, including outright torture in particularly extreme circumstances, is directly related, I believe, to the degree that one takes seriously the threat that terrorists pose to entire cities. I take this threat very seriously; that is the underlying premise of my argument, and I suspect that more than any other factor it may account for the basic difference between Waltz and me.

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My argument is a two-part one. I start with the assessment that when faced with apparently imminent and very severe terrorist threats, particularly but not necessarily only those involving weapons of mass destruction, all or at least most governments—and certainly the government of the United States—will resort to coercion and at least some forms of what we usually regard as torture, should non-coercive interrogation fail to provide the necessary information to avert catastrophes. Proceeding from that assumption, I conclude that since torture in today's international environment is highly likely, the best course is to develop serious means of controlling it, so that it is not employed in other than truly exceptional and catastrophic circumstances.

Logically, my argument could rest there. However, I go on to argue that torture may be not only inevitable, but also justifiable, in lesser-evil terms. Of course, for this to be convincing, it is also necessary to show that torture sometimes produces "practical benefits," as Waltz puts it. My conclusion that it sometimes does so is not an "assumption," but follows from my reading of the historical evidence, which I set forth in the article. Because Waltz does not address this issue, it is not clear to me whether she is arguing that I misread the evidence.

The core of Waltz's criticism, I believe, is her conclusion that "when all the probabilities are taken into account, it is difficult to imagine real circumstances in which torture is the least bad alternative." I disagree, for it is all too easy to imagine such circumstances in today's world; indeed, I noted the evidence that in all probability, such circumstances have already arisen.

That said, however, let me emphasize that I am quite aware of the fact that the "practical benefits"—that is, correct information—sometimes produced by torture hardly, in itself, justifies torture. Put differently, whether torture "works" and whether it is morally justifiable are entirely separate questions. Throughout history, it is obvious that torture has been overwhelmingly non-justifiable. But for precisely that reason, I argue the need for serious judicial and other controls, to ensure that torture is indeed a lesser rather than a greater evil.

Finally, I am in complete agreement with Waltz's eloquent discussion of the costs to international law of undermining the categorical prohibition of torture. This is a real and serious cost—indeed, as I observed in the article, there are other serious costs as well. Nonetheless, Waltz is right, and I should have specifically at least mentioned the consequences to international law.

Even so, it would not have changed my argument. The issue is not whether there are serious moral and practical costs to employing torture—of course there are, for torture is evil. That is precisely why the choice of whether to employ it to avert an even greater evil is a tragic one. However, it is morally obvious—and certainly not a point of disagreement between Waltz and me—that torture should be resorted to only if "the use of truth serum or non-coercive interrogation methods" fails to provide important and time-urgent information necessary to avert an overwhelming human catastrophe. Indeed,

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I am puzzled by her comment, since I specifically made this argument in my section on "Last Resort."

Despite our differences, however, I very much appreciate both the civil tone and substantive contribution of Susan Waltz to the terrible—but necessary—debate over whether torture is ever morally justifiable as a lesser evil.

JEROME SLATER
State University of New York, Buffalo

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Index to Volume 121

Articles

ALEXSEEV, MIKHAIL A.	Russia, China, and the Immigration Security Dilemma	1
ARONOFF, YAEL S.	In Like a Lamb, Out Like a Lion: The Political Conversion of Jimmy Carter	425
AUERSWALD, DAVID P.	Deterring Nonstate WMD Attacks	543
BARANY, ZOLTAN	The Politics of Russia's Elusive Defense Reform	597
ÇAVDAR, GAMZE	Islamist *New Thinking* in Turkey: A Model for Political Learning?	477
CLUNAN, ANNE L.	The Fight against Terrorist Financing	569
DE NEVERS, RENÉE	The Geneva Conventions and the New Wars	369
DIETRICH, JOHN W.	U.S. Human Rights Policy in the Post-Cold War Era	267
DIXON, PAUL	Performing the Northern Ireland Peace Process on the World Stage	61
FRANCIS, JOHN G.	Airbus and Boeing: Strengths and Limitations of Strong States	629
HINOJOSA, VICTOR J.	Presidential Survival and the Impeachment Process: The United States and Colombia	653
HESS, GARY R.	Presidents and the Congressional War Resolutions of 1991 and 2002	93
HOFSTETTER, C. RICHARD	See Alexseev, Mikhail A.	1
JAENICKE, DOUGLAS	President Bush and Social Policy: The Strange Case of the Medicare Prescription Drug Benefit	216
JONES, SETH G.	The Rise of a European Defense	240
KALTENTHALER, KARL	The Rationality of Radical Islam	293
OSTBERG, C.L.	The Canadian Supreme Court: Attitudinal Conflict in Right to Counsel Cases	677
PÉREZ-LIÑÁN, ANIBAL S.	See Hinojosa, Victor J.	653
PEVZNER, ALEX F.	See Francis, John G.	629
PRALLE, SARAH	"I'm Changing the Climate, Ask Me How!": The Politics of the Anti-SUV Campaign	397
ROTTINGHAUS, BRANDON	"Dear Mr. President": The Institutionalization and Politicization of Public Opinion Mail in the White House	451
SLATER, JEROME	Tragic Choices in the War on Terrorism: Should We Try to Regulate and Control Torture?	191
WADDAN, ALEX	See Jaenicke, Douglas	216
WETSTEIN, MATTHEW E.	See Ostberg, C.L.	677
WIKTOROWICZ, QUINTAN	See Kaltenthaler, Karl	293
WILLIAMS, MARK ERIC	Escaping the Zero-Sum Scenario: Democracy versus Technocracy in Latin America	119
ZEGART, AMY B.	An Empirical Analysis of Failed Intelligence Reforms before September 11	33

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ELECTRONIC REPRODUCTION PROHIBITED

Books Reviewed

Abshire, David M., Saving the Reagan Presidency: Trust is the Coin of the Realm — Brandon Rottinghaus — 340

Adams, John A., Bordering the Future: The Impact of Mexico on the United States — Tony Payan — 709

Alexseev, Mikhail A., Immigration Phobia and the Security Dilemma: Russia, Europe, and the United States — Kimberly Marten — 706

Alter, Jonathan, The Defining Moment: FDR's Hundred Days and the Triumph of Hope — Sarah Phillips — 717

Andersson, Fredrik, Harry J. Holzer and Julia I. Lane, Moving Up or Moving On: Who Advances in the Low-Wage Labor Market — Helen Connolly — 164

Avant, Deborah D., The Market for Force: The Consequences of Privatizing Security — Jeremi Suri — 536

Barrett, David M., The CIA and Congress: The Untold Story from Truman to Kennedy — Sean Gailmard — 336

Bass, Jack and Marilyn W. Thompson, Strom: The Complicated Personal and Political Life of Strom Thurmond — Hanes Walton, Jr. — 727

Becker, Tal, Terrorism and the State: Rethinking the Rules of State Responsibility — Eric Posner — 505

Bloom, Mia, Dying to Kill: The Allure of Suicide Terror — Ignacio Sanchez-Cuenca — 151

Brader, Ted, Campaigning for Hearts and Minds: How Emotional Appeals in Political Ads Work — Glenn W. Richardson, Jr. — 513

Brauer, Ralph, The Strange Death of Liberal America — Carol Nackenoff — 734

Britton, Hannah Evelyn, Women in the South African Parliament: From Resistance to Governance — Michael Kevane — 352

Brockett, Charles D., Political Movements and Violence in Central America — John A. Booth — 183

Bronson, Rachel, Thicker than Oil: America's Uneasy Partnership with Saudi Arabia — William B. Quandt — 705

Brook, Daniel, Modern Revolution: Social Change and Cultural Continuity in Czechoslovakia and China — Thomas Bernstein — 507

Brooks, Stephen G., Producing Security: Multinational Corporations, Globalization, and the Changing Calculus of Conflict — Tanisha Fazal — 326

Calavita, Kitty, Immigrants at the Margins: Law, Race, and Exclusion in Southern Europe — Terri Givens — 157

Camp, Roderic Ai, Mexico's Military on the Democratic Stage — Naunihal Singh — 540

Canes-Wrone, Brandice, Who Leads Whom? Presidents, Policy, and the Public — Richard Sobel — 730

Carkoglu, Ali and Barry Rubin, eds., Greek-Turkish Relations in an Era of Détente — Nikolaos Zahariadis — 160

Clapp, Jennifer and Peter Dauvergne, Paths to a Green World: The Political Economy of the Global Environment — Douglas A. Kysar — 361

Cooley, Alexander, Logics of Hierarchy: The Organization of Empires, States, and Military Occupation — Katja Weber — 700

Cruz, Consuelo, Political Culture and Institutional Development in Costa Rica and Nicaragua: World-making in the Tropics — Bruce Wilson — 523

Cryer, Robert, Prosecuting International Crimes: Selectivity and the International Criminal Law Regime — Jenia Iontcheva Turner — 526

Davis, Richard, Electing Justice: Fixing the Supreme Court Nomination Process — Donald Grier Stephenson — 141

Davis, Richard, Politics Online: Blogs, Chatrooms and Discussion Groups in American Democracy — Henry Farrell — 517

Dine, Janet, Companies, International Trade and Human Rights — Layna Mosley — 537

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Downs, Donald Alexander, Restoring Free Speech and Liberty on Campus — Mark Kemper — 349
Ellis, Richard J., To the Flag: The Unlikely History of the Pledge of Allegiance — David Greenberg — 172
Erkulwater, Jennifer L., Disability Rights and the American Social Safety Net — Michael Givel — 733
Eshbaugh-Soha, Matthew, The President's Speeches: Beyond "Going Public" — Philip Abbott — 726
Falola, Toyin and Ann Genova, The Politics of the Global Oil Industry — Evan Hillebrand — 737
Fisher, Louis, Military Tribunals and Presidential Power: American Revolution to the War on Terrorism — Joseph M. Bessette — 145
Flamm, Michael W., Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s — Edward Morgan — 167
Foran, John, Taking Power: On the Origins of Third World Revolutions — Saïd Amir Arjomand — 736
Francia, Peter L., The Future of Organized Labor in American Politics — Joseph A. McCartin — 722
Franklin, Daniel P., Politics and Film: The Political Culture of Film in the United States — Doris A. Graber — 728
Frisch, Scott A. and Sean Q. Kelly, Committee Assignment Politics in the U.S. House of Representatives — John Baughman — 719
Gaddis, John Lewis, The Cold War: A New History — Fred I. Greenstein — 318
Galbraith, Peter W., The End of Iraq: How American Incompetence Created a War Without End — James J. Wirtz — 710
Gallagher, Tom, Modern Romania: The End of Communism, the Failure of Democratic Reform, and the Theft of a Nation — Katia Papagianni — 158
Gallagher, Mary Elizabeth, Contagious Capitalism: Globalization and the Politics of Labor in China — Peter Moody — 359
Gambetta, Diego, Making Sense of Suicide Missions — Assaf Moghadam — 142
Gammer, Moshe, The Lone Wolf and the Bear: Three Centuries of Chechen Defiance of Russian Rule — Georgi M. Derluguian — 743
Gardner, James A., Interpreting State Constitutions: A Jurisprudence of Function in a Federal System — John Kincaid — 348
Gibson, Alan, Interpreting the Founding: Guide to the Enduring Debates over the Origins and Foundations of the American Republic — Jethro K. Lieberman — 716
Mezey, Susan Gluck, Disabling Interpretations: The Americans with Disabilities Act in Federal Court — Bradley Hays — 165
Goldstein, Avery, Rising to the Challenge: China's Grand Strategy and International Security — Michael Chambers — 320
Gordon, Michael R. and Bernard E. Trainor, Cobra II: The Inside Story of the Invasion and Occupation of Iraq — Robert Jervis — 409
Gottfried, Paul Edward, The Strange Death of Marxism: The European Left in the New Millennium — George Ross — 332
Guilhot, Nicolas, The Democracy Makers: Human Rights and the Politics of Global Order — Suzanne Ogden — 187
Gutterman, David S., Prophetic Politics: Christian Social Movements and American Democracy — Kimberly Conger — 342
Hacker, Jacob S. and Paul Pierson, Off Center: The Republican Revolution and the Erosion of American Democracy — Todd Belt — 512
Hale, Henry E., Why Not Parties in Russia? Democracy, Federalism, and the State — Stephen Blank — 744
Hansford, Thomas G. and James F. Spriggs, II, The Politics of Precedent on the U.S. Supreme Court — Mark S. Hurwitz — 699

LICENSED TO UNZ.ORG
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Harris, Fredrick C., Valeria Sinclair-Chapman and Brian D. McKenzie, Countervailing Forces in African-American Civic Activism, 1973–1994 — Keith A. Mayes — 720

Hayduk, Ron, Democracy for All: Restoring Immigrant Voting Rights in the United States — J. Morgan Kousser — 724

Herspring, Dale R., The Pentagon and the Presidency: Civil-Military Relations from FDR to George W. Bush — Jay Parker — 153

Hill, David, American Voter Turnout: An Institutional Perspective — Michael McDonald — 516

Horowitz, Shale, From Ethnic Conflict to Stillborn Reform: The Former Soviet Union and Yugoslavia — Julie George — 738

Howard, Philip N., New Media Campaigns and the Managed Citizen — John Sides — 529

Hyden, Goran, African Politics in Comparative Perspective — Nicolas Van de Walle — 741

Isard, Peter, Globalization and the International Financial System: What's Wrong and What Can Be Done — Anastasia Xenias — 185

Jarvis, Sharon E., The Talk of the Party: Political Labels, Sympolic Capital & American Life — Darrell M. West — 341

Jesse, Neal and Kristen P. Williams, Identity and Institutions: Conflict Reduction In Divided Societies — Steven Majstorovic — 188

Johnson, Robert David, Congress and the Cold War — Barry M. Blechman — 723

Jones, Bryan D. and Frank R. Baumgartner, The Politics of Attention: How Government Prioritizes Problems — Scott Robinson — 515

Kacowicz, Arie M., The Impact of Norms in International Society: The Latin American Experience, 1881–2001 — Cameron Thies — 182

Katzenstein, Peter J., A World of Regions: Asia and Europe in the American Imperium — Norrin M. Ripsman — 509

Kennedy, Scott, The Business of Lobbying in China — Andrew Mertha — 154

Khrushchev, Sergei, Memoirs of Nikita Khrushchev: Commissar (1918–1945) — William Tompson — 178

Kitts, Kenneth, Presidential Commissions and National Security: The Politics of Damage Control — Amy B. Zegart — 703

Kosar, Kevin R., Failing Grades: The Federal Politics of Education Standards — David Campbell — 533

Kydd, Andrew H., Trust and Mistrust in International Relations — Aaron Hoffman — 147

Lawless, Jennifer L. and Richard L. Fox, It Takes a Candidate: Why Women Don't Run for Office — Elizabeth Smith — 351

Legro, Jeffrey W., Rethinking the World: Great Power Strategies and International Order — Stacie E. Goddard — 331

Lichterman, Paul, Elusive Togetherness: Church Groups Trying to Bridge America's Divisions — Katherine Cramer Walsh — 171

Lieber, Robert J., The American Era: Power and Strategy for the 21st Century — Patrice C. McMahon — 501

Lischer, Sarah Kenyon, Dangerous Sanctuaries: Refugee Camps, Civil War, and The Dilemmas of Humanitarian Aid — Scott Straus — 527

Lynch, Allen C., How Russia is Not Ruled: Reflections on Russian Political Development — Andrew Kuchins — 358

Mandelbaum, Michael, The Case for Goliath: How America Acts as the World's Government in the Twenty-first Century — Patrice C. McMahon — 501

Mansfield, Edward D. and Jack Snyder, Electing to Fight: Why Emerging Democracies Go to War — Bruce Russett — 701

Mark, David, Going Dirty: The Art of Negative Campaigning — Leah A. Murray — 732

Mayer, William G., The Making of the Presidential Candidates 2004 — Philip Paolino — 338

Miller, Steven E. and Dmitri Trenin, The Russian Military: Power and Policy — Deborah Ball — 181

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ELECTRONIC REPRODUCTION PROHIBITED

Moghalu, Kingsley, Rwanda's Genocide: The Politics of Global Justice	DAVID SIMON	524
Morone, James and Lawrence R. Jacobs, eds., Healthy, Wealthy, & Fair: Health Care and the Good Society	MARY RUGGIE	144
Munkler, Herfried, The New Wars	JACK LEVY	177
Nardulli, Peter F., *Popular Efficacy in the Democratic Era:* A Reexamination of Electoral Accountability in the United States, 1828-2000	NICOLE MELLOW	534
Norris, John, Collision Course: NATO, Russia, and Kosovo	JAMES M. GOLDGEIER	179
Nyamnjoh, Francis B., Africa's Media: Democracy and the Politics of Belonging	GORAN HYDEN	355
Oldmixon, Elizabeth Anne, Uncompromising Positions: God, Sex, and the U.S. House of Representatives	MELODY ROSE	530
Olson, Laura R., Sue E. S. Crawford and Melissa M. Deckman, Women with a Mission: Religion, Gender, and the Politics of Women Clergy	ELIZABETH OLDMIXON	170
Ostrom, Elinor, Understanding Institutional Diversity	JONATHAN KOPPELL	362
Patten, Chris, Cousins and Strangers: America, Britain, and Europe in a New Century	JOLYON HOWORTH	708
Pedahzur, Ami, Suicide Terrorism	MIA BLOOM	503
Phillips, David L., *Losing Iraq: Inside the Postwar* Reconstruction Fiasco	PATRICE C. MCMAHON	330
Pickus, Noah, True Faith and Allegiance: Immigration and American Civic Nationalism	ANDREW L. AOKI	324
Pierceson, Jason, Courts, Liberalism and Rights: Gay Law and Politics in the United States and Canada	DAVID RAYSIDE	345
Polsby, Nelson W., How Congress Evolves: Social Bases of Institutional Change	ALAN WARE	510
Posner, Daniel N., Institutions and Ethnic Politics in Africa	NELSON KASFIR	327
Prunier, Gerard, Darfur: The Ambiguous Genocide	OUSMANE KANE	319
Rathbun, Brian, Partisan Interventions: European Party Politics and Peace Enforcement in the Balkans	SUSAN WOODWARD	155
Redish, Martin H., The Logic of Persecution: Free Expression and the McCarthy Era	LUCAS POWE	168
Reeher, Grant, First Person Political: Legislative Life and the Meaning *of Public Service*	*GERALD BENJAMIN*	714
Richards, David A. J., The Case for Gay Rights: From Bowers to Lawrence and Beyond	DAVID RAYSIDE	348
Rose-Ackerman, Susan, From Elections to Democracy: Building Accountable Government in Hungary and Poland	ANNA GRZYMALA-BUSSE	150
Rosenson, Beth A., The Shadowlands of Conduct: Ethics and State Politics	FRANK ANECHIARICO	175
Rudalevige, Andrew, The New Imperial Presidency: Renewing Presidential Power after Watergate	J. RUSSELL MUIRHEAD	519
Sartori, Anne E., Deterrence by Diplomacy	RICHARD HARKNETT	323
Schoenbrod, David, Saving Our Environment from Washington: How Congress Grabs Power, Shirks Responsibility, and Shortchanges the People	DENISE SCHEBERLE	162
Serfaty, Simon, The Vital Partnership: Power and Order, America and Europe Beyond Iraq	WERNER LIPPERT	161
Small, Melvin, *At the Water's Edge: American Politics and the* Vietnam War	ROBERT BUZZANCO	174
Spruyt, Hendrik, Ending Empire: Contested Sovereignty and Territorial Partition	PETER LIBERMAN	506

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Stonecash, Jeffrey M., Political Parties Matter: Realignment and the Return of Partisan Voting — MARY MCGUIRE — 322
Sulkin, Tracy, Issue Politics in Congress — ERIC S. HEBERLIG — 532
Taylor, Andrew J., Elephant's Edge: The Republicans as a Ruling Party — WENDY J. SCHILLER — 337
Tilly, Charles, Trust and Rule — OMAR G. ENCARNACION — 148
Trinkunas, Harold A., Crafting Civilian Control of the Military in Venezuela: A Comparative Perspective — DEBORAH NORDEN — 539
Turner, Charles C., The Politics of Minor Concerns: American Indian Policy and Congressional Dynamics — DAVID JONES — 344
Van Cott, Donna Lee, From Movements to Parties in Latin America: The Evolution of Ethnic Politics — SCOTT MAINWARING — 522
Vandiver, Frank E., How America Goes to War — MEENA BOSE — 333
Warber, Adam L., Executive Orders and the Modern Presidency: Legislating from the Oval Office — LOUIS FISHER — 712
Welch, David A., Painful Choices: A Theory of Foreign Policy Change — MAX PAUL FRIEDMAN — 520
Western, Jon, Selling Intervention and War: The Presidency, the Media, and the American Public — PAUL R. BRACE — 334
Wilson, Andrew, Virtual Politics: Faking Democracy in the Post-Soviet World — JULIET JOHNSON — 356
Yoo, John, The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11 — KENNETH W. THOMPSON — 713
Zahariadis, Nikolaos, Essence of Political Manipulation: Emotion, Institutions, and Greek Foreign Policy — SYMEON A. GIANNAKOS — 740
Zweifel, Thomas D., International Organizations and Democracy: Accountability, Politics, and Power — STEVEN BERNSTEIN — 745

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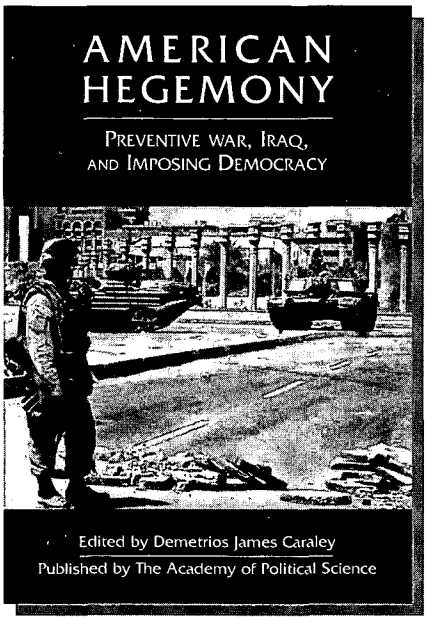
AMERICAN HEGEMONY:
PREVENTIVE WAR, IRAQ, AND IMPOSING DEMOCRACY

Edited by
DEMETRIOS JAMES CARALEY



CONTENTS

Editor's Foreword: Some Early Lessons
Demetrios James Caraley,
Barnard College and Columbia University

Introduction
Walter LaFeber, Cornell University

PART I: THE RATIONALE FOR PREVENTIVE WAR

Understanding the Bush Doctrine
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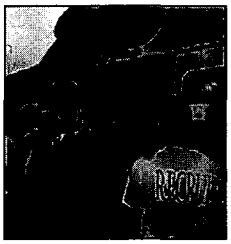

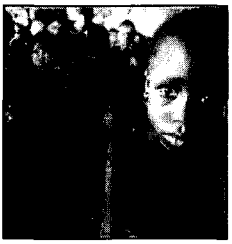

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David P. Auerswald, National War College

The Fight Against Terrorist Financing Requires U.S. Leadership and Subsidies

"A truly global counter-terrorist-financing regime could change the operating environment of terrorists, forcing them into criminal activity that is easier to trace and prosecute than is 'pre-criminal' terrorist financing. The development of a global counter-terrorist-financing regime that would change the operating environment for terrorist financiers does not appear to have genuine support from one of the critical actors needed to promote and underwrite it."

Anne L. Clunan, Naval Postgraduate School

Russia's Army Opposes Substantive Defense Reform

"Fifteen years after the fall of the Soviet Union, the Russian military remains impoverished, demoralized, and largely ineffective, despite substantially boosted budgetary allocations since 2001. Cold War–era mentality, top-heavy rank structure, poor training, and outdated equipment still plague Russia's forces."

Zoltan Barany, University of Texas

How European States Created Airbus and Challenged Boeing

"The decision to challenge American supremacy in commercial aviation grew out of the goal of establishing or reestablishing a European presence in what had long been regarded as a sector that exemplified national power. From its very beginning, a key Airbus objective was to lead the commercial aircraft market."

John G. Francis, University of Utah and Alex F. Pevzner, Alexander Anolik, APLC

How Presidents Clinton and Samper Survived Impeachment

"Modern presidents in the United States and other presidential democracies are able to survive the threat of impeachment when the accusations are not 'politically effective' (followed by a strong decline in presidential approval) and the president is able to preserve a 'legislative shield' in Congress."

Victor J. Hinojosa, Baylor University and Aníbal S. Pérez-Liñán, University of Pittsburgh

Ideologies of Canadian Justices Impact their Voting Behavior

"Despite the high degree of harmony on Canada's high court . . . ideological conflict was prevalent in right to counsel disputes, and justices from different sides of the ideological spectrum responded in different ways to some of the critical case facts."

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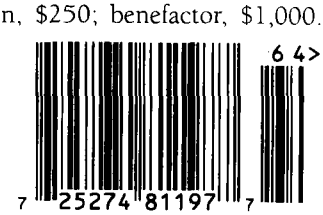

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